HarperCollins San Francisco, a Division of HarperCollins Publishers, Inc. *and* Communications Workers of America, AFL–CIO. Cases 20–CA–25454 and 20–RC–16868

April 28, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND COHEN

On October, 19, 1994, Administrative Law Judge Burton Litvack issued the attached decision. The Respondent and the General Counsel each filed exceptions, a supporting brief, and an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

The Respondent filed a motion to reopen the record to introduce evidence of employee turnover occurring after the Union filed its petition for representation on December 18, 1992. In its motion, the Respondent asserts that of the 74 employees in the bargaining unit on December 18, 1992, only 32 remain. We deny the motion to reopen the record because we find that such evidence is irrelevant under Board law concerning factors governing the issuance of *Gissel* bargaining orders. *Highland Plastics, Inc*, 256 NLRB 146, 147 (1981). Further, even if we were to consider employee turnover, the evidence offered by the Respondent would not require a different result. In this regard, we note that the Respondent's chief executive officer and highest official, James Craig, participated in unfair labor practices, reinforcing in part coercive statements of other officials; the violations committed by the Respondent were numerous and pervasive and included such ''hallmark'' violations as threats of discharge and a threat of plant closure; and, the Respondent's motion does not allege that the officials responsible for the unfair labor practices are no longer in charge of operations. We find it foreseeable that the continued presence of these officials could exert a coercive effect over unit employees, including new employees who learn of the past practices.[2] *International Door*, 303 NLRB 582, 583 (1991).

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] Although Member Cohen concurs in the result, he does so only on the basis that the contention concerning employee turnover was belatedly raised. The ''turnover'' comparison is made from a baseline of December 1992 (when the RC petition was filed). There is no explanation as to why data and contentions regarding turnover could not have been presented at the hearing in February 1994, or why the contention could not have been raised at least prior to the issuance of the judge's decision in October 1994. The issue was first raised in a motion filed on January 6, 1995.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, HarperCollins of San Francisco, a Division of HarperCollins Publishers, Inc., San Francisco, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Jonathan J. Seagle, Esq., for the General Counsel
Michael Johnson, Esq. (Baker & Hostetler), of Los Angeles, California, and *Barbara Hufham, Esq.*, for the Respondent and the Employer.
Virginia R. Jones, of Los Angeles, California, for the Charging Party and the Petitioner.

DECISION

STATEMENT OF THE CASE

BURTON LITVACK, Administrative Law Judge. On June 25, 1993, Communications Workers of America, AFL–CIO (the Union) filed objections to conduct allegedly affecting the results of a representation election involving certain employees of HarperCollins San Francisco, a Division of HarperCollins Publishers, Inc., in Case 20–RC–16868. On August 31, 1993, 2 months later, pursuant to an unfair labor practice charge in Case 20–CA–25454, filed by the Union on July 1, 1993, the Regional Director for Region 20 of the National Labor Relations Board (the Board), issued a complaint, alleging that HarperCollins San Francisco, a Division of HarperCollins Publishers, Inc. (Respondent), engaged in acts and conduct violative of Section 8(a)(1) and (3) of the National Labor Relations Act (the Act). Then, on September 3, 1993, the above Regional Director issued an order, consolidating the objections to the representation election and the complaint allegations and issued a notice of hearing on the matters. Subsequently, counsel for Respondent timely filed an answer to the complaint, essentially denying the commission of any of the alleged unfair labor practices. On February 4, 1994, the Regional Director for Region 20 issued an amendment to the complaint in which he seeks a bargaining order remedy against Respondent. Thereafter, on February 14 through 17, 1994, in San Francisco, California, a trial on the above-matters was held before me. At the trial, all parties were afforded the opportunity to examine and to cross-examine all witness, to offer into the record any relevant evidence, to argue their legal positions orally, and to file posthearing briefs. The latter documents were filed by counsel for the General Counsel and by counsel for Respondent and have been carefully considered. Accordingly, based upon the entire record, including my observation of the testimonial demeanor of each of the several witnesses and the posthearing briefs, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a State of Delaware corporation, with an office and place of business in San Francisco, California, is engaged in the business of publishing books and related media. In the normal course and conduct of the business operations, during the 12-month period ending June 30, 1993, which period is representative, Respondent derived gross revenues in excess of $500,000 and purchased and received goods and services, valued in excess of $50,000, directly from points outside the State of California. Respondent admits that, at all times material, it has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

Respondent admits that the Union is, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

III. ISSUES

The complaint alleges that Respondent violated Section 8(a)(1) and (3) of the Act by laying off employees Monica Baltz, Julie Wunderlich, Dawn Balzarano, and Gina Hyams. Further, the complaint alleges that Respondent's supervisors and agents engaged in conduct violative of Section 8(a)(1) of the Act by threatening employees with loss of benefits if they selected the Union as their bargaining representative, informing employees that they could not improve their working conditions and that it would be futile for them to select the Union as their bargaining representative, threatening employees with more onerous working conditions and unspecified reprisals if they selected the Union, impliedly threatening employees with discharge if they remained dissatisfied with their working conditions, threatening employees that they would not be able to work on special projects if they selected the Union, soliciting grievances from employees and impliedly promising employees increased benefits and improved working conditions if they abandoned their support for the Union, directly promising employees that it would address their grievances if they abandoned their support for the Union, suggesting to employees that they form an ''association'' to deal with it concerning their terms and conditions of employment, threatening to close the San Francisco office and relocate it if employees selected the Union, telling employees that they were disloyal to it by supporting the Union, and threatening employees that it might engage in unlawful conduct if employees continued to support the Union. Finally, in view of the asserted severity of the foregoing allegations and as, based upon signed authorization forms, a majority of Respondent's employees selected the Union as their bargaining representative, the General Counsel seeks a bargaining order as the only effective remedy for Respondent's unlawful conduct. Contrary to the General Counsel, Respondent denies the commission of any of the alleged unfair labor practices and argues that the assertion of the Union's majority status is not legally viable and that, assuming the commission of any unfair labor practices, such were not severe enough to warrant the imposition of a bargaining order remedy.

IV. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

HarperCollins Publishers, Inc. is a multinational corporation engaged in the worldwide publication and sale of books and related media. The record establishes that, in 1977, Respondent was created when the former moved its religious book division from New York City to San Francisco, California; that, prior to August 1992, Respondent encompassed three publishing divisions, which were housed in separate locations and operated as separate business entities; that, in the above month, Respondent's publishing divisions were relocated to the third and fourth floors of a downtown office building and Respondent commenced centralizing many functions, including mailroom and computer services; that, in January 1993, Respondent's San Francisco operations expanded to five separate publishing divisions—Harper San Francisco,[1] Collins San Francisco,[2] The Understanding Business/Access Publications (T.U.B.),[3] HarperCollins West,[4] and HarperCollins Visual;[5] and that, at all times material, Clayton Carlson has been Respondent's senior vice president and the chief executive officer for each of its San Francisco publishing divisions. The record further establishes that, as of December 1992, approximately 75 individuals were employed in 60 nonmanagement job classifications by Respondent's publishing divisions.

The record discloses that, as of the beginning of March 1993, alleged discriminatee Monica Baltz worked in the sponsorship department of Respondent's Collins San Francisco division, alleged discriminatee Dawn Balzarano worked for Respondent in the computer department section, alleged discriminatee Julie Wunderlich worked in the religious marketing department of Respondent's Harper San Francisco division, and alleged discriminatee Gina Hyams worked for Respondent's T.U.B. division as a marketing/special sales coordinator. Monica Baltz, who had been employed by Respondent for 5 years and worked continuously in the Harper San Francisco sponsorship department,[6] which is responsible for ''locating and identifying . . . sponsors, negotiating the deals with them, and then . . . servicing the sponsors throughout their involvement in the book[s],''[7] and who was

[1] The largest of Respondent's five San Francisco divisions, Harper San Francisco is the continuation of the religious book division. In addition, it has expanded into the publishing of general trade publications with a West Coast perspective and books concerning philosophy, psychology, and spiritual self-improvement.

[2] Collins San Francisco specializes in publications, consisting of expensive, ''highly visual'' books and cookbooks.

[3] T.U.B. operated a design and consulting service and specialized in the publication is specialized guides, such as travel guides.

[4] HarperCollins West is a regional publishing program, specializing in local and regional marketing.

[5] HarperCollins Visual is a custom publishing service, providing books for various groups and charities.

[6] Baltz began as a marketing assistant. In 1991, she assumed the duties of marketing manager and was given the title in the summer of 1992.

[7] Given the high cost of many of the books, published by Collins San Francisco, sponsors, who may have an interest in the subject matter, are sought in order to defray development and publication expenses.

supervised by Kathy Quealy, the sponsorship director,[8] testified that her sponsorship work involved three main areas: administrative support work, which consists of maintaining files and liaison work with other departments; sponsorship acquisition, which consists of researching book topics, researching potential sponsors for potential books, and ''enticing'' them to help underwrite the development and publication costs involved in the project; and sponsor relations, which consists of ''keeping the sponsor involved'' and ''carrying out the contractual obligations we had with the sponsor.''[9] Baltz further testified, and there is no dispute, that, commencing in June 1992, Lena Tabori, the president of Respondent's Collins San Francisco,[10] assigned her to perform foreign sales work for the division. This work concerned the publication of Collins San Francisco books in foreign countries and attendant dealings with foreign publishers and, according to Baltz, occupied at least half of her worktime. Dawn Balzarano began working for Respondent in September 1992 and testified that her work in the latter's computer department consisted of three aspects. She was the administrative assistant to Dessa Brashear, the director of the computer department; she was the administrator of the electronic mail (E-mail) system; and she worked on the computer ''help'' desk, which is Respondent's service for employees who were experiencing hardware or software problems with their computers and which work consumed in excess of 50 percent of her worktime. Julie Wunderlich, who had worked in Respondent's Harper San Francisco division since March 1992, began as a customer service representative in the telemarketing department[11] and, from August 1992 through March 1993, worked as a marketing coordinator in the religious book marketing department. In the latter department, Wunderlich worked under Mark Brokering, the vice president of religious marketing,[12] and Tom Artz, the parish and backlist marketing manager. Wunderlich testified that her work was mainly for the latter and consisted of coordinating direct mail projects, developing marketing materials (brochures, flyers, postcards), handling all mailing requirements for backlist books, selling advertising for two professional journals (*Church Teachers* and *Pulpit Digest*), and performing parish marketing work, which consisted of selling directly to churches and church organizations. Finally, Gina Hyams, who had been employed in Respondent's T.U.B. division since August 1992, worked under Mark Johnson, the president and creative director, and Mark Goldman, the design director,[13] in her capacity as a marketing/special sales coordinator. She testified that her job had two aspects, finding corporate sponsorship for titles which T.U.B. wished to develop and promoting preexisting titles, including convention visitors guides and a series of workbooks, developed for the American Association of Retired Persons (AARP), two of which were a prescription drug handbook and a retirement planing program for corporations.

The record reveals that, amongst Respondent's employees, the subject of representation by a labor organization initially arose in the summer of 1992 during discussions at one of their formal nonmanagement group meetings,[14] and that, with the assent of the others, some employees volunteered to contact local labor organizations. At a nonmanagement group meeting in mid-October, they reported their findings, and the Union was specified as the labor organization which would best meet the employees' concerns. After a majority voted in favor of exploratory contacts, employees, including Baltz and Wunderlich, met with officials of the Union and discussed an organizing campaign, and, at that initial union meeting and subsequent meetings, employees were given authorization forms and requested to distribute them and to solicit signatures.[15] The record further reveals that, thereafter, an informal and unpublicized union organizing committee, which fluctuated in size between 12 and 15 employees, including alleged discriminatees Baltz, Hyams, and Wunderlich,[16] on which any nonmanager could participate and which, among other things, published a newsletter during the preelection campaign period, was established as an adjunct to the nonmanagement group; that, during November and December, members of the organizing committee and other employees, including Baltz, actively engaged in authorization form solicitations of employees in Respondent's offices either during nonmanagement group meetings or during private conversations at work stations; and that, from November 16 through December 14, no fewer than 57 employees executed authorization forms for the Union.[17] Moreover, after the ini-

[8] Respondent admitted that Quealy is a supervisor within the meaning of Sec. 2(11) of the Act.

[9] While she worked for the Collins San Francisco sponsorship department, Baltz was involved in sponsorship acquisition and servicing for such projects as *A Day in the Life of Ireland, A Day in the Life of California, A Day in the Life of China, A Day in the Life of Italy, and A Day in the Life of Hollywood.*

[10] Respondent admitted that Tabori was a supervisor within the meaning of the Act.

[11] This work consisted of taking telephone orders for catalog books, keeping track of customer complaints, drafting monthly reports on the types of incoming telephone calls, and participating in sales promotions. On the work, Wunderlich was supervised by Carol Brown, the marketing manager. Respondent admitted her status as a supervisor within the meaning of the Act.

[12] Respondent admitted that Brokering was a supervisor within the meaning of the Act.

[13] Respondent admitted Goldman's status as a supervisor within the meaning of the Act.

[14] The record establishes that the nonmanagement group meetings were open to all of Respondent's nonmanagement employees, were regularly scheduled, were held during the lunch hour in Respondent's third floor conference room, were formal in the sense that minutes were taken and there was a rotating chairperson, and were open for discussion of any subject of concern to the employees.

[15] According to Monica Baltz, the CWA representatives instructed card solicitors to tell employees that their signatures were an authorization to the Union to act in their behalf; that their signatures would be used by the Union to seek immediate recognition from Respondent as the employees' collective-bargaining representative, but that Respondent would have the option of refusing and demanding an election.

[16] Besides the named alleged discriminatees, the main union adherents amongst the employees, and probable members of the union organizing committee, included Joann Moschella, Matt Campbell, Griffin Fariello, and Beth Weber.

[17] Each of the alleged discriminatees executed an authorization form and, at the hearing, identified her signature on the form bearing her name. Also, Baltz testified that she gave authorization forms to two employees, each of whom executed her form in Baltz' presence. Further, employee Griffin Fariello identified his signature on an authorization form bearing his name and testified that he gave authorization forms to four other employees, each of whom signed in Fariello's presence. Finally, at the hearing, James Blanco, who

tial October meeting, employee meetings with the Union's officials were held on a weekly basis away from Respondent's office during late 1992 and the first half of 1993 and that, along with other employees, alleged discriminatees Baltz, Wunderlich, Hyams, and Balzarano regularly attended the union meetings.

There is no record evidence that Respondent was aware of the union organizing campaign amongst its nonmanagerial employees until December 18, 1992. There is no dispute that, on the above date, with such a large number of employees having executed authorization forms and after discussion at a nonmanagerial group meeting, a group of approximately 20 employees, including Balzarano and Wunderlich, visited Clayton Carlson's office and presented to him a letter, signed by 26 employees, including Wunderlich, Balzarano, and Baltz, stating:

> We are here to inform you that more than 75 percent of the non-management employees of all four divisions of HarperCollins San Francisco have decided to be represented by the Communications Workers of America (CWA) and have filed a petition with the National Labor Relations Board (NLRB).
>
> The petition constitutes a request for an election, however, we would prefer that HarperCollins voluntarily recognize the CWA as our representative in collective bargaining. This would preclude a lengthy and expensive election process.
>
> Should HarperCollins desire verification of the signatures on the petition a mutually agreed upon third person can be selected to do so.[18]

Joann Moschella and Matt Campbell were the spokespersons for the group of employees, and, according to Julie Wunderlich, Moschella said, ''[T]hat we had decided to unionize and we had asked for representation by CWA, that we felt that there were issues that could best be addressed through a union contract.'' Carlson read the document but was noncommittal as to Respondent's response.

That same day, December 18, according to Monica Baltz and Gina Hyams, each informed her supervisor that she was involved in the Union's organizing campaign amongst Respondent's employees. Thus, Baltz testified that she began a holiday vacation on December 18 and that, upon arriving at her parents' home in Cincinnati, Ohio, she telephoned Kathy Quealy, and, as such would become common knowledge from her signature on the letter to Carlson, informed her supervisor that she was on the union organizing committee because she desired a collective-bargaining agreement in order to secure better benefits and that such was no reflection upon their relationship. According to Baltz, Quealy responded that this was ''very bad news'' and ''bad timing.''[19] Gina Hyams testified that, on December 18, she went to Mark Goldman's office ''and told him that something very important had just happened that day . . . and described that the employees had gone and presented this letter to Clayton Carlson and that I wanted him to know that my support for the union drive did not reflect my feelings for him or for the department.''

The General Counsel contends that, shortly after being presented with its employees' demand for recognition of the Union as their representative for purposes of collective-bargaining and the filing of the instant representation petition by the Union, Respondent began an unlawful campaign designed to quash its employees' support for the Union. Thus, Baltz testified that she returned from her vacation on Monday, January 4, 1993; that, the next day, along with 25 other employees and supervisors, she attended a Collins San Francisco staff meeting in Lena Tabori's office; that the meeting was ''extraordinary'' as it was devoted entirely to a discussion about the Union; and that, during the meeting, Tabori informed those present that Carlson had received the December 18 employee petition, that a union election was pending and that she did not have much information and wanted to hear the staff's reactions. At this point, according to Baltz, Beverly Orenstein, a manager, recounted her experiences at a local television station, with the employees' union forcing them to remain in rigid job descriptions, and another supervisor, whose name Baltz could not recall, said that ''the [Collins San Francisco] employees would lose many of their benefits if we were to have a union'' and that, with the advent of a union, ''everybody was going to be treated the same and . . . all of the salaries and benefits would be brought in line.''[20] Baltz further testified that Tabori remained silent during these latter comments, failing to disavow what was said, and that she was the only employee who spoke in opposition to the negative comments concerning union representation.[21] Tabori failed to testify at the hearing, and Ellen Georgiou, who, in January 1993, had been working in the Collins San Francisco sponsorship department with Baltz and Quealy for a year, testified on behalf of Respondent with regard to a January 1993 staff meeting at

works for the Bureau of Alcohol, Tobacco, and Firearms as an examiner of questioned documents and who was authenticated as an expert in such matters, authenticated the employee signatures on 46 authorization forms.

Apparently helping to stimulate the organizing effort was Harper San Francisco's surprise November 10 memorandum, announcing, in order to introduce a team concept whereby four individuals would be responsible for guiding a book through the entire publishing process, the elimination, effective January 8, 1993, of five marketing department positions (consisting of three copywriters and two publicity coordinators) and the creation of a new marketing associate position, incorporating the copywriter and publicity coordinator duties. Each affected employee had executed a union authorization form, and one, Griffin Fariello, was one of the union proponents. Finally, in this regard, the record establishes that, prior to January 1, 1993, marketing coordinators and copywriters received the same benefits as other nonmanagers, were supervised by the same managers, and worked along with and had regular and substantial contacts with other nonmanagerial employees and that, subsequent to January 8, a marketing associate, a bargaining unit position, performed many of the functions of a copywriter and a publicity coordinator.

[18] In fact, the representation petition in Case 20–RC–16868 was filed by the Union on that same day, December 18, 1992.

[19] Quealy confirmed such a conversation and did not deny the comment attributed to her by Baltz.

[20] Baltz said such would have been adverse to the interests of the Collins San Francisco staff as their salaries and benefits were higher than Respondent's other employees.

[21] In addition to speaking out in favor of union representation at the Tabori meeting, Baltz' name regularly appeared on the front of the prounion newsletter, which union proponents began regularly publishing and disseminating in January 1993. Dissemination included placing copies of the newsletter in employee mailboxes and posting copies on employee bulletin boards.

which Baltz was present but failed to specifically controvert the latter's testimony.

Gina Hyams testified that, in January 1993, Mark Goldman approached her at her office cubicle and said that he had just returned from a management meeting and that, at the meeting, he had been told that employees would lose benefits if they formed a union. Hyams replied that Respondent's New York employees had been represented for 20 years without problems, and Goldman replied that there was no comparison between the two situations. The latter testified that, during the preelection period, Respondent regularly held ''informal'' meetings for managers, regarding the ''progress'' of the Union's campaign, and that, indeed, he did speak to Hyams after one such meeting. He further testified that, after Hyams asked him what was said at the meeting, the discussion centered upon the employees' benefits and that ''I believe I told Gina . . . that I was told that all benefits would be up for negotiation'' once the employees selected the Union.

Julie Wunderlich testified that, one day in January 1993, Carol Brown asked Kathryn Bader, Brown's assistant, and Wunderlich to come to her office to answer some questions about the Union's organizing drive;[22] that the conversation lasted for 45 minutes; and that Brown ''began by asking us what we expected to gain from unionizing. We told her we wanted to have a voice in determining . . . our benefits and our working conditions. . . . She said that . . . we had more of a chance of determining those things now than we would if we unionized . . . that the company wouldn't negotiate or . . . would attempt to negotiate a short contract so that we would always be under negotiations . . . and the company would never agree to amending a contract.'' Brown added that the CWA represented employees in the telecommunications industry and would not allow Pacific Bell to reduce benefits but agreed to massive layoffs. Wunderlich testified that Brown continued, stating that ''having a union would result in regimented job descriptions and less creativity, that the former's and Bader's jobs would become more secretarial in nature, and that a union wasn't a good idea for white collar employees.''[23] Kathryn Bader did not testify at the hearing and, recalling the conversation, Carol Brown testified, ''I know that we were talking some about the Union, and I was attempting to understand the reasons behind the non-management employees . . . wanting a union, and . . . asked some questions about that.'' Further, ''I recall asking why they would want to be part of any union at [Respondent] and if they felt a union would help gain them any better treatment . . . and both said no . . . that this was something that they were doing for other employees.'' Brown also recalled that she told the two employees about her experiences with the CWA—''that the jobs were described for us and were very rigid.'' Brown added that she felt Wunderlich and Bader ''wouldn't have the same kind of freedom . . . that they had now.'' Finally, she denied warning that Respondent would not negotiate with the Union or that Respondent would never agree to a contract.

Wunderlich next testified with regard to a regularly scheduled marketing meeting, conducted by Mark Brokering in early January. According to the alleged discriminatee, all of the religious marketing department employees were present, and, near the end, Brokering said he wanted to discuss the union campaign ''and he asked us what our concerns were'' and began ''querying us about types of issues,'' such as overtime or promotions—''What are your issues?'' To this, Matt Campbell, one of the principal union adherents, replied that the employees wanted a voice and a contract. Brokering responded ''that if we were unhappy with our employment at Harper, maybe it was time for us to move on elsewhere . . . .'' Then, echoing the comments of Carol Brown, he added that, with a union, the employees' jobs would be more regimented and ''that he would not be able to give us special projects that were not part of our job descriptions, and, as a result, employees ''wouldn't be promoted as quickly because we wouldn't be able to take on responsibilities that were at a higher level.'' No employee witness testified in corroboration of Wunderlich, and Mark Brokering testified that he recalled the January 1993 religious marketing staff meeting at which he discussed his views of the Union and that ''I remember telling them that I thought if the Union came in . . . it would make it very difficult for us to have the kind of flexibility to give them new projects . . . that were outside of their job descriptions.'' Also, Brokering, who said he was careful to clear his remarks about the Union with Respondent's ''legal department'' prior to this meeting, denied threatening anyone with discharge or telling unhappy employees to leave and stated that he did offer to speak further with any employee who so desired and that twice asked, ''[W]hat they were going to get that they didn't already have.''

Finally, allegedly as an aspect of Respondent's antiunion campaign in January 1993, Monica Baltz testified that, on the Sunday following the staff meeting in Tabori's office at which she spoke out in defense of the Union, in response to a message that it was ''very important'' that she telephone Tabori no matter how late in the day, she made a telephone call to the Collins San Francisco president. According to the alleged discriminatee, who, at the time, shared a large office with her supervisor, Kathy Quealy, and who was uncontroverted, Tabori said that Quealy had been made a member of a management task force against the union organizing drive and inasmuch as ''I was on the union organizing committee . . . a decision had been made to move me from my office . . . to a cubicle . . . just outside of that office.'' Continuing, Baltz testified that, because of illness, she did not return to work until Wednesday, January 13, and immediately commenced moving her desk materials and whatever other materials were necessary for her job to the cubicle, which is located in the corridor outside Quealy's office, 5 or 6 feet from the doorway, and which contains no more than a third of the work space available at Baltz' former desk. According to Baltz, complicating her unwelcome task of transforming this cubicle into a comfortable work environment[24] was that a part-time intern, Laura Oliver, had been using the cubicle as her work area and had her own computer on the desk. To make room for Baltz, Oliver was per-

[22] Brown believed that Wunderlich was a union adherent inasmuch as the latter had union bumper stickers and buttons in her office and ''she told me.''

[23] According to Wunderlich, Brown became quite emotional at this point, and she had to be comforted by the two employees.

[24] Describing the surroundings, Baltz said that the area of the cubicle is very dark, without a window, and poorly ventilated.

mitted to move her work equipment, including the computer, to a large, vacant office, located across the corridor from Quealy's office. According to Kathy Quealy, as ''it was felt that both of us being so involved from different sides. . . . it was becoming increasingly difficult for me to be involved, to have meetings, to receive phone calls, to have staff com[e] and [talk] to me,'' in conjunction with Lena Tabori, she decided to move Baltz' work area to the cubicle. Quealy added that she chose the cubicle because she and Baltz would be able to continue overhearing each other's work conversations and that not only did Baltz never complain about the move but also the latter ''understood and thought it was for the best.''[25] Baltz directly disputed Quealy on this latter point, stating that, a week after her move to the cubicle, she spoke to Lena Tabori in the latter's office, complained to Tabori that the move to the cubicle seemed to have been ''punitive'' because of her involvement in the union campaign, and asked, if such was not punitive, rather than the intern, why was not she given the vacant office, which was located across from Quealy's office and which was comparable in size to it. Tabori replied that office space was always a ''vital'' employee concern ''and that to move me into the vacant office would have appeared to other employees . . . as though I were being rewarded for my union activity and . . . she couldn't do it.'' Baltz was uncontroverted both as to the occurrence of and the substance of this conversation.

The record establishes that, on February 8, 1993, Clayton Carlson addressed a gathering of all of Respondent's San Francisco facility employees in the third floor conference room; that, the next day, February 9, Respondent's chief executive officer, George Craig, visited the San Francisco facility and addressed a similar gathering of all employees in the same room; that the subject of both speeches was the Union; and that each man responded to employee questions at the conclusion of his remarks. In his speech, echoing the theme of other management officials, Carlson emphasized that the Union was ''an antiquated, outdated model'' and would not work for Respondent's employees as it would be ''rigid'' and stifle creativity,'' would ''hamper'' the employees' career potential, and would not allow management to have flexible job descriptions. He then mentioned the New York employees, who were covered by a collective-bargaining agreement and said that they preferred to be evaluated on merit rather than on the Union's system. Carlson admitted that, at one point, he told the employees he took ''personally'' the allegations that Respondent treated its employees unfairly. One employee, who spoke after Carlson concluded, was Gina Hyams; she responded to the former's comments about Respondent's New York employees, saying she understood that said employees' collective-bargaining agreement provided for higher wage increases than received by the San Francisco employees and for lower health insurance premiums.

[25] Quealy denied that the intern, Laura Oliver, was working in the cubicle at the time of Baltz' move or that she was displaced. Rather, according to Quealy, while Oliver had worked in the cubicle after being hired by Respondent in September 1992, she had been working in the office across the hall from Quealy's office for a ''couple of months'' prior to Baltz' move. Ellen Georgiou corroborated Quealy that Oliver was working in the above office at the time Baltz was moved to the corridor cubicle.

The complaint alleges that George Craig made several unlawful comments during his speech and in his responses to employee questions. At the outset, Respondent's Exhibit 15 is a copy of Craig's prepared remarks for that meeting, and he testified that he read directly from the text and did not depart from it during the speech. Contradicting him in this regard were two individuals, who testified on behalf of Respondent. Thus, Brenda Knight, who now is a management official but in February 1993 was a nonmanagement employee, testified that she was seated in the back of the room and that, as to whether Craig was, in fact, reading, ''there was a lot of eye contact and very little looking down,'' and employee Caroline Pincus testified that she was no more than three or four rows from Craig and that he ''may have had some notes, but he seemed to be on an extemporaneous role.'' Next, as to Craig's demeanor while speaking, Dawn Balzarano characterized him as being ''pretty rambunctious'' and Julie Wunderlich described him as being ''loud'' and ''angry.'' In contrast, Craig said that, if he was loud during his speech, it was because ''the acoustics were not great'' and that it would be ''very inaccurate'' to characterize him as being angry. Corroborating the alleged discriminatees, however, current employee Pincus described Craig as follows: ''He had that kind of rolled sleeve ready for a kind of a good one. He was fired up. . . . he was loud.''

As to the content of Craig's speech to the employees, there is no dispute that he began by describing Respondent's financial situation and, then, prefacing his remarks with ''the business is in danger of getting screwed up by this union activity,'' launching into a discussion of his past relations with unions and his position on the subject of unions generally, Respondent's ''standards'' for dealing with labor organizations, and his view of the effects of union representation upon the bargaining unit employees. The complaint alleges that Craig unlawfully told employees that they were being disloyal to Respondent and threatened that Respondent might engage in unlawful conduct if the employees continued to support the Union, and, in this regard, alleged discriminatees Wunderlich, Balzarano, and Hyams testified that Craig told the employees that their union activity demonstrated disloyalty to Respondent and that Respondent's campaign against the Union would be tantamount to war. Taking Craig at his word that he read verbatim from a copy of Respondent's Exhibit 15, the document, in part, refers to his past ''turbulent'' involvement with unions and states, on page 3,

> I could write a book on the conflicts which I have lived through during the last twenty-five years and maybe one day I will. . . . I'm sure you get the message that the company will fight this action—which I personally see as extremely disloyal and ill-conceived—with every weapon at our disposal because its nothing short of war, with the battle being about preventing this wonderful business from being destroyed.[26]

[26] Asked to explain why employees were demonstrating disloyalty to Respondent by supporting the Union, Craig averred that his reference was to Clayton Carlson's dealings for the past 18 months with the nonmanagement group and his efforts to deal with their ''requests'' and to the sudden demand for union recognition without any prior warning. He conceded, however, that he never mentioned this to the employees.

At the conclusion of his speech, Craig answered questions from the employees, and the complaint alleges that Craig made several unlawful comments in the course of his responses. One question concerned the effect of a strike, and, according to Julie Wunderlich, Craig said, ''[I]f CWA caused a strike that they could easily find other people to do the work. That was at the same time . . . he said . . . because of publishing technology, it would be very easy for the company to move its operations out of San Francisco.'' Corroborating her, Gina Hyams recalled Craig saying that the Union would cause the employees to strike and warning that ''if we went on strike . . . with the technology available in publishing today . . . they didn't need to stay in San Francisco, that they could just move their offices because they didn't need the hassle of a union or of a strike.'' Craig testified that he answered the question by stating, ''[T]hat we will take whatever steps that we need to take within the law to protect the business. I also said . . . that our jobs are not necessarily tied to any individual location. I talked about electronic publishing.''[27] Finally, asked if Craig said it would be easy to move if employees went on strike, Caroline Pincus testified that she could not recall Craig's words but ''boy, I came away with that impression and I heard other people came away with that impression . . . .''[28] Another question, posed by Brenda Knight, concerned the differences between a union and an employee association, such as that to which the New York based outside sales representatives belong. Gina Hyams testified that Craig answered that the latter group had independently negotiated a collective-bargaining agreement with Respondent, that ''he liked working with the association, that they were pro-company and loyal and that he'd be happy to talk about it with anybody.'' Craig added, ''[T]hat he would deal with an association but not with the Union.'' According Hyams, at that point, she spoke out that employees had real concerns and, if he believed a union was not the answer, what did he see as an alternative? Craig responded, ''[T]hat if we dropped this union bullshit, then he would sit down and discuss our problems and that we would find that he's a very good listener.'' Likewise, Julie Wunderlich recalled that, in response to a question as to what would he suggest if not a union, Craig said, ''If you'll drop this union bullshit, I'll be willing to sit down and talk to you. You'll find that I'm a very good listener.'' Also, Dawn Balzarano recalled that, in answering the above question, Craig said, ''[I]f we would drop the union, he would talk about . . . an employee association.''

Craig, who stated that he knew that he could not say to the employees that, if they dropped their union claim, he would sit down and discuss the issues, specifically denied encouraging the employees to form an association, using the term ''bullshit'' during the meeting, or offering to sit down with the employees and resolve their grievances. As to the sales association, Craig testified that he was asked what labor organizations represented Respondent's North American employees; that he mentioned each one, including an association for the New York based outside sales force; that an employee asked what the association was; and that he said, ''[I]t was a separate legal entity'' but gave no further details. Brenda Knight, who denied that Craig said he preferred an association to dealing with a union, testified that Craig seemed to have been ''caught off his guard'' by her question and deferred to Brenda Marsh, who is Respondent's vice president for sales and who was in the meeting room. Thereupon, Marsh explained what the sales representatives' association was, and Craig said that it was ''a creative alternative'' to a union which ''worked'' for those employees and that ''he was able to work very well with the Association.'' Knight also testified that Marsh discussed the ''advantages'' of the association and that Craig ''agreed with everything Marsh said . . . .'' Finally, on this point, Respondent's witness Caroline Pincus was asked a series of questions by me. Asked if Craig said, ''[I]f you drop this union bullshit, I'll sit down and talk to you,'' and she replied, ''Yes, he did.'' Also, asked if Craig said he'd rather deal with an association than deal with a union, Pincus answered, ''Yes, he did.'' And, asked if Craig said he would only deal with an association and not the Union, Pincus said, ''I think . . . he said it, but whether he said only, I wouldn't be able to tell you.''

On March 8, 1993, Monica Balz, who maintained a high profile as a union supporter after her telephone conversation with Kathy Quealy the previous December,[29] was removed from her sponsorship and foreign sales jobs with Collins San Francisco and, in lieu of immediate layoff, was offered a temporary job in the foreign sales department of Harper San Francisco. Baltz testified that Lena Tabori was terminated by Respondent on March 1 and that, a few days later, Carlson informed the Collins San Francisco employees that they should not be concerned with Tabori's layoff and that he would be meeting with each individually to ''describe our jobs.'' Thereafter, on March 8, Kathy Quealy told her that Clayton Carlson wished to speak to her with regard to sponsorships and foreign sales. Baltz went to his office, and, according to Baltz, Carlson began by saying that sponsorship department work had declined and that, as ''at that moment we had not retained any sponsorship for the project we were working on . . . my position as sponsorship relations manager was no longer viable.''[30] Carlson added that he also had decided to fold the duties and responsibilities of her foreign rights job into his department, which was an international publishing department and which performed the same functions for his division, and, therefore, her foreign sales job no longer existed as of that date. Then, Carlson said he could offer Baltz a temporary position, working in the Harper San Francisco international department for 3 or 4 months at her current salary and benefits, and would try to find her a permanent position. Carlson added that, if she declined to accept

[27] Clayton Carlson, who was present during Craig's speech, denied that the latter said anything about closing the San Francisco office and said he would have remembered such a comment.

[28] Several union supporters' newsletters appeared subsequent to Craig's speech and, while certain aspects of his talk were continually mentioned, such as his comments regarding Respondent's position on a union shop and prediction that the Union would insist upon such during bargaining, there is no mention of a threat to close the San Francisco office.

[29] Besides speaking out at the January 5 Collins San Francisco staff meeting, later that week, Baltz appeared at the Board's hearing in Case 20–RC–16868 on behalf of the Union. Also, during January and February, her name appeared on the first page of each newsletter, published by the union organizing committee.

[30] The sponsorship department's current project was tentatively titled *A Day in the Life of Country Music*. At the time of her conversation with Carlson, only one sponsor had been recruited, and the project was eventually canceled.

his offer, she would be laid off with a 60-day notice period and a severance package.[31] There is no dispute that Baltz accepted Carlson's offer and commenced working for Harper San Francisco, identifying and following up on any licenses and contracts for which moneys were owed to Collins San Francisco by foreign publishers.'' After only 2 months, however, and with the above work not yet completed, as ''[the foregoing] wasn't a job that I readily elected to do . . . .'' Baltz decided to, and did, voluntarily quit her job with Respondent. Thereafter, Baltz received a 60-day notice of termination letter, dated May 21, from Carlson, advising her that her employment with Respondent would be terminated on July 20; that, except for assisting in the transition of the projects upon which she was working, she was not required to perform any work for Respondent during the next 2 months; and that she would receive a severance payment at the conclusion of the 2-month period.[32]

On or about March 11, Julie Wunderlich, who wrote articles for the prounion newsletter and whose name appeared therein, was laid off by Respondent. According to the alleged discriminatee, on that day, she observed that Tom Artz, the backlist and parish marketing manager and the individual for whom she worked, leaving Mark Brokering's office ''very abruptly and he looked upset.'' She concluded, correctly, that Artz had just been informed that he was laid off, and, moments later, Brokering asked her to come to his office. He told Wunderlich that her position had been eliminated due to a departmental ''restructuring,'' which had been accomplished without consulting him, and added that her layoff had nothing to do with her job performance. As did Baltz, Wunderlich received a 60-day notice of termination letter, which did not require her to perform any work for Respondent during the 2-month notice period.

On or about March 12, Dawn Balzarano received notice that she had been laid off by Respondent. According to the alleged discriminatee, on that day, she observed that Henry Jetter, who maintains an office in Scranton, Pennsylvania, and is the director of the computer systems department for HarperCollins Publishers, Inc., had been speaking to Dessa Brashear in the latter's office.[33] Thereupon, Balzarano was called into Brashear's office, and Jetter said, ''[T]hat they'd been reorganizing the systems department and that . . . he had been looking for a place to fit me in and tried . . . but he could not find a place, so therefore I was being laid off.'' As did the other alleged discriminatees, Balzarano, who testified that she had no prior notice and that she and Brashear were in the process of setting up an evaluation review of her work, received a 60-day notice of termination letter, which informed her that she was not required to report for work during the 2-month notice period.

On or about March 12, Gina Hyams, who not only had announced her support for the Union but also had appeared at the Board's representation case hearing and had questioned Carlson and Craig at their February meetings, was informed of her layoff. According to the alleged discriminatee, on the Monday of that week, upon arriving at work, she learned that she had not been invited to a lunch for a new supervisor to which all other nonmanagers had been invited. She went to Mark Goldman and asked if she should be ''paranoid,'' and Goldman replied that she should not because ''it was an antiunion lunch and . . . the powers that be already thought my mind was made up on the matter and they didn't want to have me there.'' Thereafter, on Friday, she was summoned to the office of Dan Roth, who had just recently been placed in charge of T.U.B., and ''he told me that my job was being eliminated effective right then . . . and that it had nothing to do with my job performance . . . and that they'd hired an outside telemarketing firm to take over my job and that the consultant was prepared to hire me the next day to manage [Respondent's] . . . account for the consultant.'' Hyams asked what would happen to the projects on which she had been working; Roth said he hoped she would ''follow up on them'' on her new job.[34] Hyams was given the names of the outside telemarketing firm and its owner and, the following week, spoke to the latter, Laura Hilton, who offered Hyams a job at her same salary without benefits and told her that it was just a 3-month trial project and would cover only AARP work. Hyams rejected the offer. She further testified that, in mid-April, she became aware that Respondent had posted the a new job, establishing a customer service representative position.[35] Although the salary was $10,000 less than she previously had received, Hyams applied for the job and was interviewed by Mark Brokering. Brokering telephoned Hyams, 2 weeks later, and told her that Respondent had decided to suspend the new position until the end of the year.[36] Finally, Hyams testified that Respondent never informed her of a job posting in June 1993 for a special sales associate job and that, other than not ever having performed commission sales work, she possessed the required background for it.

With regard to Respondent's defenses to the allegations of the complaint, that the personnel actions involving Monica Baltz, Julie Wunderlich, Dawn Balzarano, and Gina Hyams were violative of Section 8(a)(1) and (3) of the Act, Clayton

[31] In November, when Respondent decided to eliminate the copywriter and publicity coordinator positions, effective January 8, 1993, each of the five affected employees also received a 60-day notice of termination letter.

[32] While Baltz was not required to report to Respondent's facility after May 21, she was not prohibited from doing so.

This 60-day notice of termination letter is identical to that received by the other alleged discriminatees. Specifically, neither Baltz, Hyams, Wunderlich, nor Balzarano was required to report to the office or perform any work for Respondent during the 60-day notice period. In contrast, the 60-day notice letter, which was given to Griffin Fariello by Respondent prior to the employees' demand for recognition of the Union, required him ''to perform your current duties'' during the notice period. Carlson explained the difference in treatment, saying that ''the people who left in the spring of 1993 for the most part did not have any real responsibilities to continue on with.''

[33] Balzarano later learned that Jetter had requested, and received, Brashear's resignation.

[34] Hyams received the identical 60-day termination notice letter, which was received by the other alleged discriminatees.

[35] The employee in the position would be responsible for researching targeted wholesale and retail categories outside the traditional book trade, opening accounts for various products, establishing a sales tracking system, and maintaining files, databases, and mailing lists.

[36] Brokering testified that he had not been in favor of establishing the new position; that a ''temp'' had been performing most of the work and was given the extra duties established by the position; and that the work lasted only a short time beyond the posting. Consequently, according to Brokering, the job was never filled.

Carlson, who denied that any of the foregoing acts were unlawfully motivated,[37] testified that, in the summer of 1992 after Respondent's three existing San Francisco divisions (Harper San Francisco, Collins San Francisco, and T.U.B.) were relocated to Respondent's present office facility, management commenced an examination of its overall operations, designed to consolidate operations and eliminate duplicative services, and internal reorganizations within the divisions, designed to improve the functioning of each.[38] At approximately the same time, in November 1992, a budget review of the divisions' fiscal projections showed that there would be an income ''shortfall'' for the July 1992–June 1993 fiscal year of between $2 and $2.5 million. Another fiscal review, undertaken in February 1993, revealed that the projected income shortfall had risen to between $5 and $5.5 million, and, by March, income was projected to be at least $8 million below budget.[39] Although it is unclear when such supposedly occurred, according to Carlson, Respondent's executive committee, composed of Carlson, the financial director, the publisher of Harper San Francisco, and the division heads, met and decided on a course of action: an immediate effort to increase income with several initiatives, including the promotion of the AARP programs being marketed by Gina Hyams, and an immediate effort to decrease expenses, exemplified by a decision ''to downsize.''[40] Stating that actual staff reductions began in January 1993, Carlson testified that several management officials were adversely affected by Respondent's decision in that regard and by Respondent's on-going operational reorganizations within its three divisions. Thus, with the existing three divisions having been relocated to the present location and, with that, the elimination of the challenging aspect of the job, the position of vice president of operations was eliminated and the incumbent, Pam Byers, ''terminated her employment.'' Also, in January, two management positions in the Harper San Francisco manufacturing department were eliminated, with both incumbents laid off and their tasks combined with those of the incumbent director of the manufacturing department. In March, according to Carlson, due to a disagreement with him over the direction of the ''Day in the Life'' series,[41] Lena Tabori was forced to resign, and, as a result, Carlson assumed her duties of publisher and president of Collins San Francisco. Further, in that month, notwithstanding having been given greater responsibilities 2 months' earlier, the director of Harper San Francisco's manufacturing department was terminated as he possessed insufficient knowledge and expertise in the area of electronic technology ''as it relates to both design and composition.'' Also, in March, Carol Brown and Tom Artz were laid off from Harper San Francisco's religious marketing department. According to Carlson, books had been marketed in three forms—by retail, direct marketing to the consumer, and parish-oriented. ''And as we looked at how the business was developing during that early part of 1993, it was quite clear that . . . the parish side was the side that was giving the least kind of return.'' Therefore, two simultaneous decisions were implemented resulting in the two layoffs: ''not to produce study guide kinds of books that were the mainstay of that kind of marketing and to essentially shut down parish marketing.'' Carlson added that Artz had been responsible for parish marketing and that, after Brown and Artz had departed, ''the emphasis was put on the retail . . . and . . . direct marketing under Mark Brokering.''[42] Further, in March, Dessa Brashear was laid off as Respondent implemented an initiative, planned in December 1992, to move from mainframe technology and to have each of its North American locations, including the San Francisco office, develop computer systems tailored to its own business needs

[37] While acknowledging being ''surprised'' by the union campaign, Carlton denied being personally hurt or offended and stated that he would not have characterized the employees as disloyal. He recalled, however, becoming angered at a particularly critical E-mail message, with such leading to the an employee agreement to limit such messages to announcements of meetings and the like. Carlton also stated that he was aware of Monica Baltz' name appearing in the newsletter.

Carlson pointed to many factors, which assertedly negate any inference of unlawful motivation: that the alleged discriminatees received the same termination severance packages as given to managers, who were terminated during 1993; that Joann Moschella and Brenda Knight, both of whom were known to him as leading union adherents, received promotions to management positions during the preelection period; that, in excess of 25 individuals were, in some way, impacted upon by the organizational changes which occurred after November 1992; and that Respondent did nothing to interfere with the Union's communicative process, permitting the nonmanagement group meetings to continue, the posting of prounion literature on bulletin boards, and employee use of the E-mail system for announcements of meetings.

[38] As an example of the latter, Carlson pointed to the Harper San Francisco November announcement of the elimination of the copywriter and publicity coordinator positions, necessitated by the implementation of the so-called ''team'' publishing concept.

[39] While no financial records were offered as corroboration for Carlson's testimony, R. Exh. 16, a February 18, 1993 memo to the employees, establishes that Respondent was sharing the same financial information with its employees.

Carlson attributed the following as causes of the revenue declines: for Harper San Francisco, the response was slow to new titles and sluggish backlist (books previously published but continuing in print) sales; for Collins San Francisco, the ''A Day in the Life'' series was not performing to projections and sponsorships were down; and, for T.U.B., there was a fall-off in the consulting business and a slow start for the custom publications.

[40] Conceding that he informed employees, in the wake of the November announcement of the elimination of five jobs, that no other job eliminations were planned, Carlson testified that he meant what he said as, at the time, the deficit ''looked recoverable by the end of the fiscal year.''

[41] Carlson believed the books should focus on geographic areas; while Tabori believed the stress should be placed on industries.

[42] Mark Brokering, who was Harper San Francisco's vice president for religious marketing in March 1993, testified that, at that time, Respondent was ''experiencing sales shortfalls. We in the religion area were accounting for . . . a third of the revenues for the company and yet we had a lot of staff. . . . I think the company just felt that the resources needed to be focused on the general trade and there was just too much being focused on the religion area. . . . So it was a consolidation of the marketing department.'' He further testified that Carol Brown was in charge of major accounts and Tom Artz was in charge of marketing two religious magazines and of backlist sales; that, by March 1993, one religious magazine had been sold and publication of the other was scheduled to be discontinued; and that this was the main factor in the layoff of Artz, who ''was a leftover from a product line that had been sold [in 1991], and I tried to . . . save his neck.''

and as Brashear ''did not have the technological background to perform that kind of function . . . in San Francisco.''

Specifically, with regard to the layoff of Dawn Balzarano, Carlson[43] testified that her ''essential role'' was to work as Brashear's assistant and to work at the help desk, ''and it became quite clear that we needed more expertise at both . . . and did not need . . . the general kind of assistance that [Balzarano] provided to [Brashear].'' Thus, as Balzarano did not possess sufficient computer technical expertise,[44] ''the help desk function was taken up through a contract with a group of people . . . to meet those kinds of functions.'' Corroborating Carlson, Rajan Dev, currently the computer systems director for Respondent and, in March 1993, the project director for electronic publishing testified that, since his appointment as head of the computer services department, Respondent has been moving toward a ''more technical staff,'' hiring individuals with computer programming skills or technical training; that half of Balzarano's duties entailed administrative tasks, such as filing papers and taking meeting notes; that her help desk work was limited to easy-to-answer computer questions involving proper passwords or the use of the E-mail system; and that, if such questions became more complicated, ''she would need to contact . . . one of our contractor help desk support people.'' Dev further testified that Balzarano's help desk tasks are now ''largely automated.''

With regard to the layoff of Julie Wunderlich, Carlson testified that she was terminated in March ''as a fallout from the decision to pull back from parish marketing and to reassign the backlist marketing functions to retail and direct marketing.'' Mark Brokering, who apparently was not consulted about the layoffs of either Carol Brown, Tom Artz, or Wunderlich but was not surprised, testified that he learned of the three layoffs on March 10; that Wunderlich was Artz' assistant; and that the former's layoff was a function of the termination of Artz—''I had no doubts about that.'' Brokering added that ''I'm not even sure what Julie was doing those last few months;'' that most of her functions ''just vanished'' as the magazines were gone and the backlist mailings just stopped ''because there wasn't the personnel to do it'' and make a profit; and that whatever else she was working on was not put into effect because ''we would not have been able to afford to do those mailings. I think at the point where she was let go, we probably already axed that out of the budget.''

Counsel for the General Counsel argues that, as there was other work available for Wunderlich, she would not have been laid off but for her activities in support of the Union. In this regard, counsel points to the job of a customer service representative, Melanie Jones, who, in August 1992, had been hired to replace Wunderlich at the time the latter assumed her religious marketing duties under Tom Artz. Wunderlich testified that Jones was hired to perform the same duties she had performed; that, after working for approximately 2 months, Jones became ill and, at the time of the alleged discriminatee's layoff, had not yet returned to work; and that, after Jones became ill, her work had been performed by outside temporary workers, who, to an extent, were trained by Wunderlich to perform the work. In addition, Wunderlich noted that Respondent posted the availability of Jones' job in April but failed to inform her of the opening. While not responding directly to the foregoing, Carlson generally averred that, as with Balzarano and Hyams, Wunderlich was not assigned to another job as there was no other ''appropriate'' job for her to perform, she was a ''relatively new'' employee, and her services were no longer required. Finally, according to Carlson, he would not have terminated Wunderlich if she had possessed a higher degree of skill.[45]

Turning to the layoff of Gina Hyams, Carlson testified that her principle responsibilities for T.U.B. involved managing two AARP programs—selling a prescription drug handbook to AARP pharmacies and a retirement planning program to corporations and that, ''as part of the need to shore up fiscal year performance, the decision was taken that we needed to take . . . these two AARP products and really push them aggressively in the . . . final four months of the year. And that a much more pro-active . . . approach had to be taken to the marketing of those products.'' He added that her layoff was necessitated when, rather than continuing in-house, the decision was made to go to telemarketing in order to increase sales of the AARP products and to subcontract as ''we were looking for a fast turnaround in the level of business and there were groups available that could jump right in and do it professionally.'' Echoing this latter point, Mark Brokering, who assumed responsibility for the AARP product line when he became the vice president for marketing in March 1993, characterized Hyams' responsibilities as chaotic—she did ''a little bit of everything. She was . . . the de facto marketing director because T.U.B. didn't have a marketing director except she [did not possess the skills for the job] . . . . She was taking orders when she could . . . . and she would process those orders through . . . . And she was doing mailings . . . and selecting mailing lists and I think doing some . . . telemarketing.'' He added that T.U.B. bookkeeping was done by hand, and there was no sales data. Brokering stated that the outside telemarketing firm was ''already in place'' when he assumed his vice president job and that the goal of using the outside telemarketing firm was to get sales of the AARP products ''back on track.''

With regard to the elimination of Monica Baltz' position in the Collins San Francisco sponsorship department and the divestment of her international sales responsibilities for that division, Carlson testified that ''her essential role was to manage the relations with the sponsors and the problem that we faced is that we didn't have many relations to manage. The decision to move the 'Day in the Life' to an industry focus as opposed to a country focus made sponsorship part-

[43] Carlson testified that he knew that employees would have to be terminated after the February budget review ''when it looked like . . . we were going to be . . . $8 million dollars down for 1993 and . . . we had to figure out . . . given the budget process of fiscal 1994, what the staffing levels were going to be'' and that recommendations as to the specific individuals who would be terminated were made by the chief financial officer and managers and he ''accepted them.''

During cross-examination, Carlson conceded that new positions were created during 1993—a new marketing assistant position in June and a marketing manager position in August.

[44] Balzarano admitted not having any specialized or technical computer training or skills.

[45] Carlson stated that the same applied to Hyams and Balzarano.

ners very difficult to find.''[46] He added that ''the job of finding sponsors was the responsibility of Kathy Quealy and Ellen Georgiou . . . that [Baltz'] particular responsibility was once the sponsors have been found . . . to handle the relationships after the fact,'' and that, given the lack of sponsors, Tabori was able to give Baltz increased responsibilities, working on international ''rights'' and sales.[47] Disputing the alleged discriminatee's estimate that the latter work accounted for at least half of her working time, Carlson stated that ''it was really just beginning. I don't know that even any concrete deals had been made.'' Kathy Quealy, the sponsorship department manager, testified that, within the department, she and Georgiou ''basically did the contracting and the pitching and the selling and brought the sponsor to contract. And then [Baltz] would pick it up from the point that the contract had been executed to make sure that the sponsor had all the involvement and received all the enhancement and support that [it] needed, which was the relationship end of it;'' that Baltz performed no sponsorship acquisition work after 1991; and that Baltz told her ''that she didn't like the selling, the cold calling.''[48] Quealy further testified that sponsorship sales had declined from a high of $1.4 million, in November 1991, with the publication of *A Day in the Life of Ireland* to the sale of just one sponsorship, worth approximately $100,000, for the proposed *A Day in the Life of Country Music* book in March 1993 and that this decline had its greatest impact on the Baltz' work ''because she was responsible for servicing the contracts that we hadn't secured.'' Asked why Baltz' position was eliminated and not that of Georgiou, Quealy said that ''we didn't have sponsorship and we were still seeking sponsorship on the number of other projects that we had in place, and so it was the developmental side of the department that was considered still necessary.'' Finally, with regard to her international rights and sales work, inasmuch as Collins San Francisco publishes high-priced, photographic types of books and Harper San Francisco publishes ''primarily books of text,'' Baltz disputed the wisdom of combining both divisions' international work and testified that, being ''intimately aware'' of all aspects of the work, she was capable of continuing to perform the Collins San Francisco international contracting work after Tabori's layoff. Contradicting the alleged discriminatee, Carlson testified that ''we did not need separate [departments]—no, no, no. It was different only in the sense that when you do an illustrated book, you often will do co-editions . . . as opposed to just selling rights. . . . It was quite clear that [the Harper San Francisco] department could do both functions'' and that it was not a viable option to assign all Collins San Francisco international work to Baltz as the businesses ''are not that different. There would be obvious overlap if they both went to [the same book fair] . . . and it would create more confusion than it would help . . . .''

As set forth above, in view of their severity and effect, the General Counsel seeks a bargaining order remedy for Respondent's alleged unfair labor practices herein and asserts, on the basis of the above-mentioned signed authorization forms, that the Union achieved majority status as the collective-bargaining representative of Respondent's employees on or about mid-December 1993. In this regard, the main issue concerns what was said by those nonmanagement employees, who solicited signatures on the authorization forms, to their fellow employees as to the meaning and planned use of the forms. On this point, Monica Baltz, who solicited the signatures of at least four of her fellow employees, testified that she explained that the form ''authorized the CWA to represent her in collective bargaining and that her signature would be counted up among all the other signatures . . . and that [a petition for recognition would be made to [Respondent].'' Also, she told the employees that Respondent could refuse recognition and demand an election and that such was ''highly likely.'' In contrast, Brenda Knight testified that, in November, she attended a non-management group meeting and the subject of signing the Union's authorization forms was raised with Joann Moschella saying that forms were being circulated. According to Knight, Caroline Pincus asked what the wording on the form meant,[49] and a group discussion ensued, with employees Joann Moschella, Kathryn Bader, and Matt Campbell speaking. During direct examination, Knight said, ''I can't really remember exactly what was said. I just remembered . . . the comments were no, you're not automatically signing that the CWA is automatically the union. You're signing that you want . . . your right to have an election.'' During cross-examination, however, her memory became more certain—after Moschella announced that the authorization forms would be circulated, Pincus said, ''[T]hat she was willing to sign to have an election but that she didn't necessarily want to go with this union,'' and Moschella responded, ''[T]hat we weren't necessarily signing that we were going to immediately be represented but that we were signing . . . for our right to have the election.'' While Caroline Pincus also testified with regard to a nonmanagement group meeting at which union adherents explained the authorization forms and requested signatures and a discussion ensued as to the meaning of the cards, she failed to corroborate Knight either as to her asserted question or as the response. Thus, according to Pincus, ''the prevailing piece of information was that . . . signing this piece of paper would move us closer to an election and the only other possible scenario . . . was that . . . if by some chance the management . . . simply accepted CWA as our representative

[46] As an example, Carlson pointed out that *A Day in the Life of Ireland* raised $1.2 million in sponsorship fees; while *A Day in the Life of Hollywood* raised less than $400,000 in such fees, less than half the required amount for profitability. The next planned project, *A Day In the Life of Country Music*, had attracted only one sponsor by March 1993 and was ultimately canceled.

[47] Baltz denied that a decline in sponsorship work was the reason she was given international responsibilities, testifying that she was given such work as a result of an associate, who had returned from an American Bookseller's Association conference, reporting that there had been several inquiries from foreign publishers and of Tabori seeing an opportunity to develop business.

Disputing Baltz and corroborating Carlson, Kathy Quealy testified that Baltz was given foreign sales responsibility only after she spoke to Tabori about the decline in sponsorship work and a desire to keep Baltz busy.

[48] Baltz did not deny this comment and admitted that, as a result of Georgiou's work in seeking sponsors, her work declined in that area.

[49] The top of the form reads:

> We believe that only through collective bargaining can we have a voice in our work place, achieve fair treatment for all, establish seniority, job security and better benefits, wages, and working conditions. Therefore, this will authorize the [Union] to represent me in collective bargaining with my employer . . . .

without going to an election . . . this would have authorized them to represent us.'' Thereupon asked if she was told that the signing of the forms could result in either immediate recognition of the Union as the employees' bargaining representative or, what was more likely, the holding of an election, Pincus said, ''That's what we were told.'' Testifying during rebuttal, alleged discriminatees Wunderlich and Hyams corroborated Pincus' account.

Next, with regard to the proposed bargaining order remedy, Respondent points to some evidence that support for the Union was lessening as the result of its own actions and that employees seemed to have accepted the result of the June 18, 1993 representation election. As to the former, based on the respective testimony of Brenda Knight and Caroline Pincus, one day in or about February, the Union handbilled individuals as they entered Respondent's office building; on the day of the handbilling, Respondent was conducting marketing and publicity seminars for its authors, many of whom received copies of the handbill; and that several employees were upset at the Union's tactics. Concerning the latter, subsequent to the election, approximately 52 employees executed a memorandum to Carlson, advising him that they shared ''management's goal of creating a work environment that is responsive to the needs of all employees'' and desired to ''move on'' notwithstanding the unresolved status of the election.

Finally, with regard to the effect of Respondent's alleged unfair labor practices, the record establishes that, despite having achieved a 76-percent majority showing, on the basis of it's signed authorization forms, on December 18, 1992, in the June 18, 1993 representation election, the Union received only 31 votes.

B. *Legal Analysis*

The complaint alleges and counsel for the General Counsel argues that, subsequent to being confronted with its employees' demand that the Union be recognized as their collective-bargaining representative and with the Union's petition for a representation election, Respondent embarked on a campaign of restraint and coercion, culminating in the discharge of four union adherents, designed to dissuade its employees from continuing their support for the Union. At the outset, I consider the acts and conduct, violative of Section 8(a)(1) of the Act, allegedly perpetrated by Respondent's supervisors and by its chief executive officer, George Craig. Initially, as to Monica Baltz' testimony that, during a January 5, 1993 Collins San Francisco staff meeting in Lena Tabori's office, the latter failed to disavow—and, thereby, implicitly adopted—another manager's comments, that ''[Collins San Francisco] employees would lose many of their benefits if we were to have a union'' and that ''everybody was going to be treated the same and . . . all of the salaries and benefits would be brought in line.'' I note that such was uncontroverted and that, therefore, as her testimonial demeanor was that of an honest and forthright witness, Baltz' above testimony shall be credited by me. It is, of course, clear Board law that threats of a loss of benefits resulting from support for a union, whether general or specific, are patently violative of Section 8(a)(1) of the Act. *Waste Management of Utah*, 310 NLRB 887 (1993); *Crown Cork & Seal Co*., 308 NLRB 445 (1992); *Goodman Investment Co*., 292 NLRB 340 (1989); *299 Lincoln St., Inc*., 292 NLRB 172 (1988); *Unitown Hospital Assn*., 277 NLRB 1298 (1985). Herein, by her silence, Tabori adopted the unidentified supervisor's explicit warning, that the Collins San Francisco employees would lose many of their benefits because of their union support, and, given that the Collins San Francisco employees received higher salaries and benefits than did employees of Respondent's other San Francisco divisions, implicit warning that their salaries and benefits would be reduced if ''brought in line'' with those of Respondent's other San Francisco employees. Contrary to counsel for Respondent, I find that, rather than being expressions of opinion, the comments constitute threats of reprisals for employees' support for a labor organization and, thus, are not privileged under Section 8(c) of the Act. *NLRB v. Gissel Packing Co*., 395 U.S. 575 (1969). Accordingly, by not disavowing the unidentified supervisor's warnings of loss of benefits if employees supported the Union, Tabori acted in violation of Section 8(a)(1) of the Act. Similarly, Gina Hyams testified that, in January 1993, Mark Goldman approached her at her office cubicle and said that he had just returned from a management meeting at which he had been told that employees would lose benefits if they formed a union. While Goldman testified as to a different version of this conversation, inasmuch as Hyams appeared to have been the more direct and candid witness, I rely upon her testimony and find that Goldman did, in fact, utter the attributed comment. As above, the only reasonable view is that Goldman threatened that Respondent would take benefits from its employees in retaliation for their support for the Union—conduct patently violative of Section 8(a)(1) of the Act. *Waste Management of Utah*, supra; *Goodman Investment Co*., supra.

Next, Julie Wunderlich testified that, during a January 1993 conversation about the Union with Carol Brown in the latter's office, Brown told Kathryn Bader and her that, if employees selected the Union as their bargaining representative, Respondent either would refuse to bargain with the Union, would attempt to negotiate a short contract and, thereby, force the Union into continuous negotiations, or would never agree to amendments to a contract and that, if the employees selected the Union, their job descriptions would become more regimented and their jobs would become more secretarial in nature. While Brown recalled having informed the employees that her experience with the Union was that job descriptions were rigid and that employees would not have the same job freedom as they presently enjoyed and denied saying that Respondent would not negotiate with the Union, I found her recollection of the meeting with Wunderlich and Bader not nearly as precise and detailed as that of Wunderlich and, therefore, rely upon the testimony of the latter, who impressed me with her candor. The Board has long held that comments, such as those of Brown regarding Respondent's positions on bargaining with the Union, constitute threats to employees as such statements signify to employees that it would be futile for them to seek union representation and are, therefore, violative of Section 8(a)(1) of the Act. *Treanor Moving & Storage Co*., 311 NLRB 371 (1993); *Sivalls, Inc*., 307 NLRB 986, 990 (1992); *McCarty Processors, Inc*., 292 NLRB 359, 368 (1989); *Central Broadcast Co*., 280 NLRB 501 (1986). Contrary to the complaint allegations, however, I believe that Brown's comments, regarding the Union's attitude toward job descriptions and job freedom and the nature of the employees' jobs, were permissible

expressions of opinion of the consequences of union representation, privileged by Section 8(c) of the Act, and, therefore, were not violative of the Act. *Montgomery Ward & Co*., 288 NLRB 126 at fn. 3 (1988). Wunderlich further testified that, during a religious marketing meeting in early January, Mark Brokering, after saying that he wanted to discuss the Union with the assembled employees, queried them as to their concerns, including overtime and promotions; after Matt Campbell said the employees wanted a voice and a contract, replied, ''[T]hat if we were unhappy with our employment [with Respondent], maybe it was time for us to move on elsewhere;'' and, after repeating Respondent's campaign theme that, with a union, jobs would be more regimented, said, ''[W]e wouldn't be promoted as quickly because we wouldn't be able to take on responsibilities that were at a higher level.'' Notwithstanding that Brokering specifically denied telling unhappy employees to leave and said he only told the employees that, with the Union, it would be difficult to have the same flexibility in assigning projects and that Brokering appeared to be a credible witness on most points, as between the alleged discriminatee and him, Wunderlich appeared to be the more forthright and honest witness. Accordingly, I shall credit her version of the above conversation. It is certain Board law that statements, such as Brokering's invitation to unhappy employees ''to move on elsewhere,'' are, in effect, blatantly coercive threats of discharge and violative of Section 8(a)(1) of the Act, and I so find herein. *Tualatin Electric*, 312 NLRB 129, 134 (1993); *Rolligon Corp*., 254 NLRB 22 (1981). Moreover, as I believe that awarding promotions to employees is a matter an employer may effect solely upon its own initiative, Brokering's comment, that, with a union, ''we wouldn't be promoted as quickly,'' rather than being a permissible expression of opinion of the probable consequences of union representation, constituted a blatantly unlawful threat of the consequences of supporting the Union and was also violative of Section 8(a)(1) of the Act. *Leather Center, Inc*., 308 NLRB 16 (1992); *Heartland of Lansing Nursing Home*, 307 NLRB 152 (1992). Contrary to the complaint allegation, however, I do not believe that Brokering's introductory query as to the employees' concerns constituted an unlawful solicitation of grievances, suggesting an implicit promise to increase benefits and improve terms and conditions of employment. Rather, I believe that Brokering's question was intended to provoke a dialogue about the need for union representation and was, therefore, not violative of the Act. *Keystone Lamp Mfg. Co*., 284 NLRB 626, 627 (1987).

As to analysis of the complaint allegations, pertaining to George Craig's February 9, 1993 speech to Respondent's San Francisco employees, I must initially comment on the credibility of Respondent's chief executive officer. In contrast to alleged discriminatees Wunderlich, Balzarano, and Hyams, each of whom appeared to be testifying in an honest and straightforward manner, and, in particular, to Caroline Pincus, who impressed me as honestly attempting to recall the events about which she testified and who, notwithstanding her status as a current employee, testified adversely to Respondent's interests, Craig's demeanor, while testifying, was that of an utterly disingenuous witness, and I believe that, in order to buttress Respondent's legal position, he fabricated significant portions of his testimony.[50] Based on the foregoing credibility assessment, I initially find that Craig spoke in a loud and angry manner and that, while he may have utilized a prepared text on occasion, he spoke, for the most part, extemporaneously. As to what he said during the speech and in his responses to employee questions, I find merit in all of the complaint allegations. Thus, based upon his prepared text and on the recollections of the witnesses, there can be no doubt that, during his ''prepared'' talk, Craig referred to his past ''turbulent'' involvement with unions, the Respondent would fight the employees' ''action,'' which he characterized as ''extremely disloyal,'' and warned that Respondent would use ''every weapon at our disposal because its nothing short of war, with the battle being about preventing [the destruction of the company] . . . .'' By denigrating the employees' support for the Union as being ''disloyal'' to Respondent, Craig engaged in discourse transcending that which may privileged by Section 8(c) of the Act, thereby engaging in conduct violative of Section 8(a)(1) of the Act. *Cook Family Foods, Ltd*., 311 NLRB 1299 (1993); *Treanor Moving & Storage*, supra; *Belding Hausman Fabrics*, 299 NLRB 239, 241 (1990); *Southern Illinois Petrol*, 277 NLRB 160, 170 (1985).[51] Further, I agree with counsel for the General Counsel that Craig's references to the ''battle'' against the Union as being analogous to war and to Respondent's intent to fight it ''with every weapon at our disposal'' were clearly coercive and violative of Section 8(a)(1) of the Act inasmuch as said comment clearly conveyed to the listening employees the threat that Respondent would use any means, including unlawful conduct, in order to defeat the Union.

With regard to Craig's allegedly unlawful responses to employee questions, alleged discriminatees Wunderlich and Hyams each testified that Craig spoke about the possible effect of a strike called by the Union—according to Wunderlich, ''[H]e said . . . because of publishing technology, it would be very easy for the company to move its operations out of San Francisco,'' and, according to Hyams, he said that ''if we went on strike . . . with the technology available in publishing today . . . they didn't need to stay in San Francisco, that they could just move their offices . . . .'' Supporting the alleged discriminatees' recall of what was said was employee Caroline Pincus, who, testifying on behalf of Respondent, when asked, by me, if Craig mentioned moving in the event of an employee strike, was unable to recall the former's words but ''boy, I came away with that impression and I heard other people came away with that impression . . . .'' The foregoing convinces me that, in response to a question, Craig did, in fact, threaten that, in the event of a strike, Respondent would close its San

[50] To the extent that he corroborated the less than candid testimony of Craig, I place no reliance upon the testimony of Clayton Carlson, who, I believe, was not frank in this regard. Likewise, I do not credit the testimony of Brenda Knight, who impressed me as being obsequious to Respondent's interests, when she corroborated Craig.

[51] I found particularly mendacious Craig's insistence that his reference to employee disloyalty had to do with their failure to adequately consult with Clayton Carlson before engaging in a union organizing campaign. Thus, he conceded that he said nothing about this during his speech to the employees. Moreover, the context within which he characterized the employees as being ''extremely disloyal'' suggests that his reference was to the employees' support for the Union and not any failure to consult with Carlson.

Francisco office and move elsewhere, and I so find. Such a threat of business closure in order to dissuade employees from supporting a labor organization is, of course, patently violative of Section 8(a)(1) of the Act. *Interstate Truck Parts*, 312 NLRB 661 (1993); *Almet, Inc*., 305 NLRB 626, 627 (1991).[52] Further, alleged discriminatee Hyams testified that, while responding to a question by Brenda Knight regarding the differences between a union and an association, such as the one which represented the New York based outside salespersons, Craig said, ''[T]hat he would deal with an association but not with the Union,'' and her testimony, as to Craig's comment, was corroborated by current employee Pincus. I find that Craig uttered the above remark; that such clearly conveyed to the listening employees that supporting the Union would be an exercise in futility; and that Craig thereby acted in violation of Section 8(a)(1) of the Act. *McCarty Processors, Inc*., supra; *Central Broadcast Co*., supra. Finally, with regard to Craig's responses to the employees' questions that day, Hyams asked what he saw as an alternative to union representation, and, according to Wunderlich and her, Craig replied, ''[T]hat if we dropped this union bullshit, then he would sit down and discuss our problems and that we would find that he's a very good listener.'' Current employee Pincus corroborated the alleged discriminatees in this regard, and I find that Craig uttered the comment, attributed to him. Clearly, as alleged in the complaint, this remark constituted nothing less than a promise to the listening employees, by Craig, that he would redress their grievances if they abandoned their support for the Union. Board law is well settled that solicitation of grievances is unlawful only ''when it is a form of promise of benefit for rejecting a union'' and ''expressly or impliedly includes a promise to redress such grievances as are submitted.'' *Butler Shoes New York*, 263 NLRB 1031 (1982). Clearly, Craig's egregious remark falls within the Board's guideline for finding an unlawful solicitation of grievances, and I find that Respondent's chief executive officer thereby engaged in conduct violative of Section 8(a)(1) of the Act. *Grimmway Farms*, 314 NLRB 73 (1994); *Great Plains Coca-Cola Bottling Co*., 311 NLRB 506, 513 (1993).

I turn now to consideration of the allegations that Respondent failed to move Monica Baltz to a vacant office and, subsequently, removed her from her sponsorship and foreign sales jobs with Collins San Francisco and converted her to temporary employee status[53] and terminated Julie Wunderlich, Gina Hyams, and Dawn Balzarano in violation of Section 8(a)(1) and (3) of the Act and note that my determination of the legality of the acts and conduct is governed by the traditional precepts of Board law in alleged union animus discharge cases, as modified by the Board's decision in *Wright Line*, 251 NLRB 1083 (1990), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 453 U.S. 989 (1982), approved in *Transportation Management Corp*., 462 U.S. 393 (1983). Thus, in order to prove a prima facie violation of Section 8(a)(1) and (3) of the Act, the General Counsel has the burden of establishing that the alleged discriminatees engaged in union activities; that Respondent had knowledge of such conduct; that Respondent's actions were motivated by union animus; and that the discharges and layoffs had the effect of encouraging or discouraging membership in the Union. *WMRU-TV*, 253 NLRB 697, 703 (1980). Further, the General Counsel has the burden of proving the foregoing matters by a preponderance of the evidence. *Hampshire Woolen Co*., 141 NLRB 201, 209 (1963). While the above analysis is easily applied in cases in which a respondent's motivation is straightforward, however, conceptual problems arise in cases in which the record evidence discloses the presence of both a lawful and an unlawful cause for the allegedly unlawful conduct. In order to resolve this ambiguity, in *Wright Line*, supra, the Board established a causation test in all 8(a)(1) and (3) cases involving employer motivation. ''First, we shall require that the General Counsel make a prima facie showing sufficient to support the inference that protected conduct was a 'motivating factor' in the employer's decision. Once this is established, the burden will shift to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct.'' Id. at 1089. Two points are relevant to the foregoing analytical approach. First, in concluding that the General Counsel has established a prima facie showing of unlawful animus, the Board will not ''quantitatively analyze the effect of the unlawful motive. The existence of such is sufficient to make a discharge a violation of the Act.'' Id. at 1089 fn. 4. Second, once the burden has shifted to the employer, the crucial inquiry is not whether Respondent could have engaged in the discharges and layoffs herein, but, rather, whether Respondent would have done so in the absence of the alleged discriminatees' union activities and support. *Structural Composites Industries*, 304 NLRB 729 (1991); *Filene's Department Stores*, 299 NLRB 183 (1990).

Analysis of the record, as a whole, convinces me that the General Counsel has made a prima facie showing sufficient

[52] The fact that this patently unlawful threat was not mentioned by the union adherents in their subsequent newsletters does not negate this finding. Thus, the immediate concern to the employees was Craig's position on a union shop, and a response obviously was their primary effort in the days following the speech.

[53] It is unclear exactly what the General Counsel views as the alleged discrimination against Monica Baltz. While Respondent's asserted failure to give her a vacant office in January 1993 is alleged as an act of discrimination, the complaint, which the General Counsel never sought to amend, alleges that Baltz was unlawfully laid off on March 8, 1993. At the hearing, when confronted with Baltz' testimony that, rather than being laid off on March 8, in reality, she was removed from her sponsorship and foreign sales jobs with Collins San Francisco on said date, that, at the same time, she was offered a temporary job with the international department of Harper San Francisco, that she later accepted this job, and that, 2 months later, dissatisfied with the job, she voluntarily quit her employment with Respondent with the work incomplete, counsel for the General Counsel recognized the ''ambiguity'' in the foregoing and averred that Baltz' May resignation was not viewed as an unfair labor practice and that, notwithstanding the fact that Baltz received her same salary and benefits on the temporary job, what occurred after March should be viewed as Respondent's effort to mitigate damages. Then, in the introduction to his posthearing brief, counsel characterized the alleged discrimination as Baltz' termination; in his heading to part C, he changed, characterizing the alleged discrimination as ''converting Baltz to temporary employee status;'' and later in part C, and, in his conclusion, counsel reiterated that the alleged discrimination toward Baltz was her termination. In the face of this ''ambiguity,'' the record warrants the conclusion that, if Respondent unlawfully discriminated against Baltz, such involved no more than the failure to give her a vacant office in early January and her subsequent removal from her sponsorship and foreign sales jobs and conversion to temporary employment status.

to establish that Respondent was unlawfully motivated in failing to give alleged discriminatee Baltz a vacant office and removing her from her sponsorship and foreign sales jobs with Collins San Francisco and converting her to temporary employee status and in terminating alleged discriminatees Wunderlich, Hyams, and Balzarano. At the outset, there can be no doubt that each was an open and active union adherent and that Respondent was aware of the union sympathies of each. Thus, in addition to each executing a union authorization form and regularly attending employee meetings with the Union, Baltz and Wunderlich participated in the initial meetings with the Union; Baltz, Hyams, and Wunderlich were active members of the Union's employee organizing committee; Baltz actively solicited other employees to execute union authorization forms; Baltz, Wunderlich, and Balzarano signed the December 18 demand for recognition letter; Balzarano and Wunderlich were among the group of employees who presented the demand for recognition letter to Clayton Carlson; Baltz and Hyams each informed her supervisor of her support for the Union; Baltz' name regularly appeared on the front page of the union adherents' preelection campaign newsletter; Baltz was told by Lena Tabori that she would be moved from Kathy Quealy's office to a cubicle, located a few feet away, as the latter was a member of the management task force against the Union and as Baltz was on the Union's employee organizing committee; and Hyams was informed by Mark Goldman that she was not invited to an antiunion lunch as ''the powers that be'' believed her mind was made up as to union representation. Moreover, notwithstanding that management officials were also terminated, that a leading union adherent, Joann Moschella, was promoted to a management position or that Respondent permitted the prounion employees to freely post and distribute union literature and transmit union-related information via the E-mail system, there exits significant record evidence demonstrative of Respondent's unlawful animus herein. Thus, I have previously found that supervisors violated Section 8(a)(1) of the Act by threatening employees with the futility of supporting the Union, with a loss of benefits, with no chance of promotion or receiving special projects, and with discharge in order to dissuade them from supporting the Union and that, during a loud and angry speech and a question-and-answer session, Respondent's chief executive officer, George Craig, who, by virtue of his position, could be understood as authoritatively stating Respondent's position, acting in violation of Section 8(a)(1) of the Act, blatantly threatened employees with closure of Respondent's San Francisco office; threatened to utilize every available tactic, implicitly including unlawful ones, to defeat the Union; solicited grievances and impliedly promised to correct them; by stating that he would deal with an association but not with the Union, warned employees that support for the Union would be futile; and accused employees of disloyalty for engaging in support for the Union, which the termed ''bullshit.'' Furthermore, I believe that Monica Baltz, after being removed from Kathy Quealy's office, was denied use of a vacant office because of her support for the Union in violation of Section 8(a)(1) and (3) of the Act. Thus, Baltz' testimony was uncontroverted that, a week after she was relocated to the cubicle a few feet from Quealy's office, she approached Lena Tabori and asked why she was not given a vacant office across from Quealy's office and that Tabori replied that office space was always a ''vital'' employee concern and ''to move me into the vacant office would have appeared to other employees . . . as though I were being rewarded for my union activity and . . . she couldn't do it.''[54] Besides the foregoing, I note that, while those employees laid off in November 1992, at a time when Respondent was not aware of the union activities of its employees, were expected to report to Respondent's facility and continue their normal work during the 60-day notice period, Wunderlich, Balzarano, and Hyams, each of whose Union sympathies were well known to Respondent, were told that they were not required to perform their job functions during the notice period. In the foregoing circumstances, I am convinced that the General Counsel has made a prima facie showing clearly to supporting the inference that the terminations of Julie Wunderlich, Dawn Balzarano, and Gina Hyams and the removal of Monica Baltz from her positions with Collins San Francisco were motivated by their activities and support for the Union.

Therefore, in accord with the *Wright Line*, supra, analytical approach, the burden herein shifted to Respondent to establish that it would have terminated Wunderlich, Balzarano, or Hyams and removed Baltz from her positions with Collins San Francisco notwithstanding the union activities and sympathies of each employee. Initially, I note that, as the General Counsel has established a strong prima facie case, Respondent's burden herein is ''particularly heavy.'' *Vemco, Inc*., 304 NLRB 911, 912 (1991). In this regard, the testimony of Clayton Carlson, who appeared frank as to several aspects of Respondent's defenses to the alleged unfair labor practices, was uncontroverted that, in late 1992 and early 1993, upon being confronted with a serious revenue shortfall and resulting budgetary inbalance and, as one aspect of its corrective measures, Respondent decided to decrease its expenses by reducing its managerial and nonmanagerial employee complement; that, at the same time, Respondent was in the midst of reorganizing its San Francisco operations; and that, as a result of the convergence of the foregoing factors, no less than eight management officials were terminated and their positions eliminated. Turning to the alleged discriminatees and, specifically with regard to the termination of Dawn Balzarano, there is no dispute that she acted as the administrative assistant to Dessa Brashear, the director of Respondent's computer services department; that she was responsible for the office E-mail system; that she answered employee help desk questions; and that she possessed no specialized computer training or skills. Further, it is uncontroverted that, in December 1992, Respondent embarked on a program to upgrade computer capabilities at each of its locations in North America; that Dessa Brashear, who did not possess the technical qualifications to direct the revamping of Respondent's San Francisco office's computer system, was terminated for her deficiency in the area; that Balzarano's help desk work was limited to easy-to-answer computer questions involving limited expertise; that, given Balzarano's limitations, many help desk functions, requiring technical ex-

[54] I do not rely upon the respective testimony of Quealy or Ellen Georgiou that the office was already occupied by the intern, Laura Oliver. Thus, I was not impressed by the testimonial demeanor of Quealy and shall rely on her only when uncontroverted, and Georgiou appeared to be a servile witness, not worthy of belief.

pertise, had been subcontracted out; and that Balzarano, Brashear's assistant, was terminated immediately after her supervisor. Moreover, Rajan Dev, who replaced Brashear as the computer services director and who appeared to be an honest witness, credibly testified that, since his appointment subsequent to Brashear's departure, Respondent's San Francisco office has been moving toward a more technical computer capability, only hiring individuals who have computer programming training or technical training, and has automated Balzarano's former help desk functions. Clayton Carlson, who appeared to be frank during portions of his testimony, testified that, given the reorganization of the computer services department and her admittedly limited computer skills, Respondent no longer required Balzarano's services. Based upon the foregoing, none of which was controverted by the General Counsel, I find that Respondent has met its burden of proof, establishing that it would have terminated Balzarano notwithstanding her activities and support for the Union and shall recommend dismissal of the 8(a)(1) and (3) complaint allegation as to her layoff.

Turning to Julie Wunderlich, the record establishes that, at the time of her layoff, the alleged discriminatee worked as a marketing coordinator in the Harper San Francisco religious marketing department; worked mainly on selling advertising space in two professional journals, parish marketing work, and backlist sales; and reported directly to Tom Artz, the parish and backlist marketing manager. Carlson credibly testified that backlist sales were sluggish during early 1993 and that, within the religious marketing department, as parish-oriented sales were giving Respondent ''the least kind of return,'' the decisions were made to discontinue all such sales work and transfer backlist sales to the retail and direct marketing departments. Mark Brokering, who, I believe, was, for the most part, an honest witness and who was the vice president for religious marketing in March 1993, testified that, in early 1993, a decision was made to place a greater emphasis on general trade books and less of an emphasis on the religion area; that the religious marketing department was overly staffed; that one religious magazine had been sold and publication of the other was about to be discontinued; and that, based on the above factors and as he was in charge of the religious magazines and parish sales, Tom Artz was laid off. Thereafter, according to the uncontroverted testimony of Carlson and Brokering, Wunderlich's termination was a function of the termination of Artz and the ''fallout'' from the decision to pull back from parish marketing and to reassign backlist marketing to retail and direct marketing. Counsel for the General Counsel does not dispute the foregoing; rather, he argues that her layoff was unlawfully motivated as, at the time of her layoff, Respondent had other work available for her. Thus, he argues that, in March 1993, Respondent had not yet replaced Melanie Jones, a customer service representative who, due to illness, had been unable to work for several months and whose work was being performed by temporary employees, and that, prior to being transferred to religious marketing, Wunderlich had performed the same work as Jones. Contrary to counsel, it was uncontroverted, and I find, that, in early 1993, Respondent had embarked on a reduction of its employee complement due to financial considerations, rendering necessary the layoffs of nonessential employees, and that, while Wunderlich may well have been qualified to perform Jones' job functions, her present position was nonessential, and there is no record evidence that Respondent has had any business practice of transferring employees to other, available jobs in circumstances such as involved herein. Based on the foregoing, I believe that, notwithstanding her support and activities in support of the Union, Respondent has established that it would have laid off Julie Wunderlich, and I shall recommend dismissal of the 8(a)(1) and (3) complaint allegation as to her layoff.

With regard to the layoff of Gina Hyams, who worked for Respondent's T.U.B. division as a marketing/special sales coordinator, the record establishes that her work consisted of finding corporate sponsorships for books, which T.U.B. wished to develop, and promoting existing titles, primarily two AARP programs—a prescription drug handbook for AARP pharmacies and a retirement planning program for corporations. According to the candid testimony of Clayton Carlson, in early 1993, as part of Respondent's program to improve its revenue performance, a decision was made to market the two AARP products more aggressively during the final 4 months of the 1992–1993 fiscal year. He added that a ''much more pro-active'' approach was decided upon, one which would provide a fast turnaround in the level of business; that, in order to do so ''professionally,'' the decision was made to utilize outside telemarketing rather than continuing in-house; and that, therefore, Hyams' services were no longer required and, in accord with the need to reduce the employee complement, she was laid off. In asserting that Hyams' prounion activities and position were the motivating factors underlying her layoff, rather than contesting Respondent's decision to subcontract the AARP work or its perceived need to do so, counsel for the General Counsel points out that Hyams was given misleading information, by the individual in charge of the T.U.B. division, as to the amount of her prior work subcontracted to the outside telemarketing firm and that, although qualified to perform the work, Hyams was not hired, by Respondent, to fill either of two job openings in the spring of 1993. As to the first contention, I fail to understand counsel's point. Thus, contrary to counsel, I do not believe that the intent of the T.U.B. official's remark was to deceive Hyams, and there is no dispute that the outside telemarketing firm was performing the exact AARP work, which Hyams performed for Respondent, or that Hyams rejected a job offer, from the telemarketing firm's owner, to manage Respondent's account. As to the second contention, there is no record evidence that Respondent has had a business practice of rehiring laid-off workers. Moreover, I credit Brokering that the existence of the first job, for which he interviewed Hyams, was a matter of internal dispute, and that, in fact, no one was hired to fill the posted position. In short, I find merit to Respondent's defense that Hyams' job was rendered unnecessary by the former's decision to subcontract her job to an outside telemarketing firm and that, notwithstanding her activities and support for the Union, she would have been laid off. Accordingly, I shall recommend dismissal of the Section 8(a)(1) and (3) of the Act complaint allegation regarding Hyams.

Turning to Respondent's removal of Monica Baltz from her sponsorship and international sales jobs with Respondent's Collins San Francisco division, I recognize, at the outset, that the record evidence of Respondent's unlawful animus toward her is palpable. It was uncontroverted, however, that by March 1993, the Collins San Francisco sponsorship

income had precipitously declined from its 1991 level of $1.4 million dollars and that, by March 1993, the new *A Day in the Life of Country Music* project had attracted just one sponsor, who had pledged only $100,000 in underwriting funds. Moreover, in March 1993, Ellen Georgiou was responsible for performing sponsorship acquisition work for Collins San Francisco; Baltz admittedly had been performing only sponsorship servicing work and, according to Kathy Quealy and undenied by the alleged discriminatee, did not like the selling aspect of sponsorship work. In these circumstances, given Respondent's undisputed desire to reduce its employee complement, Clayton Carlson's testimony, that, inasmuch as she was responsible for servicing contracts which had not been secured, the decrease in sponsorships had the greatest impact upon Baltz' work, appears to be truthful. Further, while I did not find her otherwise credible, there also appears to be merit to Quealy's testimony that Respondent chose to eliminate Baltz' position, and not that of Georgiou, as, with Collins San Francisco was continuing to seek sponsorships in order to defray expenses on its projects. Moreover, while Baltz and counsel for the General Counsel argue that the former should have been permitted to continue her foreign sales work for Collins San Francisco, it is not my province to dispute Clayton Carlson's business judgment that, notwithstanding differences in the types of books published, it was not necessary for Collins San Francisco and Harper San Francisco to maintain separate and independent foreign rights and sales departments. Finally, I note that, rather than laying off Baltz, Respondent offered her an open-ended temporary assignment, completing the existing Collins San Francisco foreign sales work, at her existing salary and benefits, which she accepted. Surely, if Respondent was determined to rid itself of an open, active, and troublesome union adherent, termination would have been the logical move. Based on the foregoing, notwithstanding its demonstrable union animus directed toward the alleged discriminatee, I believe Respondent would have removed Baltz from her positions with Collins San Francisco and, accordingly, shall recommend that the 8(a)(1) and (3) complaint allegation as to her ''layoff'' be dismissed.

C. *The Propriety of a Bargaining Order*

The General Counsel seeks a bargaining order as the only appropriate remedy for Respondent's unfair labor practices herein. In this regard, the record evidence establishes that, as of December 14, 1992, Respondent employed approximately 75 individuals in 60 nonmanagement positions and that, as of that date, no fewer than 57 of those individuals, or 76 percent of the bargaining unit employees,[55] had executed authorization forms in favor of the Union. While, in his posthearing brief, counsel for Respondent questioned the authenticity of the signatures on said forms, no less than 46 of the signatures were authenticated by a handwriting expert, who compared these with known specimens of the employees' handwriting, and counsel himself cited *Ona Corp. v. NLRB*, 729 F.2d 713 (11th Cir. 1984), wherein the court said that such is a proper method for authenticating authorization cards. Moreover, the remainder of the executed authorization forms were authenticated either by the individuals whose signatures appear on them or by individuals who witnessed the employees, to whom they gave forms, executing them. Counsel next attacks the validity of the cards on grounds that ''employees were told that the card was to be used for the purpose of obtaining an election.'' I note, however, at the outset, that, on top of each authorization form, is the notation ''this will authorize the [Union] to represent me in collective bargaining with my employer.'' I further note that, contrary to Brenda Knight, who was not a credible witness, Caroline Pincus, who testified on behalf of Respondent on this point and who impressed me as being an entirely frank witness, stated that she was at a nonmanagement group meeting in November and was told, by union adherents, that the signing

[55] There is no dispute that a unit consisting of all of Respondent's full-time and regular part-time employees, including employees in the following job classifications: assistant editor/administrative, associate editor, administrative assistants, assistant editors/reference, editorial assistants, editorial/marketing coordinators, production coordinators, production editors, senior editorial assistants, software/scheduling supervisors, design assistants, design coordinators, designers, senior designers, desktop specialists, jacket design managers, telesales representatives, assistant direct mail managers, costumer service representatives, marketing assistants, marketing associates, marketing coordinators, editorial/marketing coordinators of evangelical books, publicists, marketing assistants, marketing associates, marketing coordinators, marketing services assistants, promotion coordinators, publicity assistants, international publishing assistants, inventory coordinators, production assistants, senior production assistants, marketing coordinators, assistant projects managers, design assistants, designers, junior designers, desktop coordinators, project coordinators, assistant editors, project editors, production artists, project managers, marketing coordinators, senior designers, assistants to the president, design/production assistants, senior designers, associate editors, film traffic coordinators, manuscript readers, production coordinators, production managers, publicity assistants, special markets assistants, sponsorship managers, systems support technicians, administrative assistants, shipping/purchasing assistants, mailroom assistants, receptionists, accounts payable assistants, accounts payable administrative assistants, finance assistants, cost accountants; excluding all other employees, senior vice president, vice president/publisher, vice president/marketing director (general books), vice president/marketing director (religious books), vice president/chief financial operations officer, personnel director, vice president/director (new business development), president/publisher (Collins San Francisco), director (international publishing department (IPD)), overseas product manager (IPD), foreign rights manager (IPD), subsidiary rights manager (IPD), parish marketing manager (marketing-religious books (M-RB)), manager, special religious markets (M-RB), advertising manager (M-RB), marketing manager (M-RB), design manager (design & creative), editor, senior editor, managing editor and manager (production editing), operations manager, accounting manager, cost accountant (Access Productions), personnel administrator, associate marketing director (M-RB), director (inventory & sales service), manager (marketing services), marketing manager (alternative books), author relations manager, publicity manager, publicity director, promotions manager, assistant inventory control manager, director (international publishing), vice president (manufacturing & direction, Access Productions), assistant production manager, West Coast Systems Director, project manager (electronic publishing systems), president/creative director (T.U.B.), design manager (Access Productions), editorial director (Access Productions), desktop publishing manager (Access Productions), senior editor (Access Productions), president/creative director (T.U.B.), design director (T.U.B.), principal designer (T.U.B.), reprint supervisor, assistant editor, (administrative), art director, executive director, executive assistant, professional employees, confidential employees, guards and supervisors as defined in the Act, constitutes an appropriate unit for purposes of collective bargaining.

of the authorization forms could result in either immediate recognition of the Union as the employees' bargaining representative or, what was more likely, the holding of an election and that alleged discriminatees Wunderlich and Hyams corroborated Pincus' account. In *NLRB v. Gissel Packing Co*., supra, the Supreme Court addressed the validity of an unambiguous single-purpose cards use for establishing majority status in such circumstances, stating that ''there is nothing inconsistent in handing an employee a card that says the signer authorizes the union to represent him and then telling him that the card will probably be used first to get an election. . . . We cannot agree . . . that employees as a rule are too unsophisticated to be bound by what they sign unless expressly told that their act of signing represents something else.'' Id. at 606–607. Echoing the Court, the Board has also held that unambiguous single-purpose cards, such as at issue herein, are adequate proof of employee union sentiment notwithstanding representations by solicitors that the purpose of the signatures is to obtain an election. *New Life Bakery*, 301 NLRB 421, 431 (1991); *Montgomery Ward & Co*., 288 NLRB 126, 128 (1988). Based on the foregoing, and the record as a whole, I find that the Union was the majority representative of Respondent's bargaining unit employees[56] at least as of December 18, 1992, the day on which employees demanded recognition, by Respondent, of the Union as their bargaining representative.

In determining whether the Section 8(a)(1) and (3) of the Act violations in which Respondent engaged are sufficiently egregious to warrant the issuance of a bargaining order remedy, I am guided, of course, by the test set forth in *Gissel Packing Co*., supra. Therein, the Supreme Court described two types of situations where such an order would be appropriate: (1) ''exceptional'' cases marked by ''outrageous'' and ''pervasive'' unfair labor practices and (2) ''less extraordinary'' cases marked by ''less pervasive'' conduct. Id. at 613–614. In the latter type cases, there must be showings that the labor organization enjoyed majority status ''at some point'' and that ''the employer's unlawful conduct has a ''tendency to undermine [the Union's] majority strength and impede the election processes.'' Id. at 614; *Mel's Battery, Inc*., 267 NLRB 420 (1983). One of the factors the Board may consider in cases where the unfair labor practice conduct is less flagrant is:

> [T]he extensiveness of [the] employer's unfair conduct in terms of [its] past effect on election conditions and the likelihood of [the recurrence of said conduct] in the future. If the Board finds that the possibility of erasing the effects of past practices and of ensuring a fair election by the use of traditional remedies . . . is slight, and that employee sentiment once expressed through cards would, on balance, be better protected by a bargaining order, then such an order should issue. [Id. at 614–615.][57]

Upon consideration of all the evidence and the record as a whole, I believe that the unfair labor practices, committed by Respondent, were neither so outrageous nor pervasive as to fall within the first category, described in *Gissel*; rather, this matter involves the second category of unfair labor practices, conduct which indelibly impeded the electoral process and warrants the issuance of a bargaining order to protect employee sentiment as more reliably expressed through the signed authorization forms.

Based on my aforementioned unfair labor practice findings, the conclusion is warranted that, no more than 2 weeks after being confronted with its employees' demand that it recognize the Union as their representative for purposes of collective bargaining and by the Union's petition for a representation election, Respondent embarked upon ''a concentrated effort to nip union organization in the bud.'' *NLRB v. Circus Circus*, 656 F.2d 403, 406 (9th Cir. 1981); *Downtown Toyota*, 276 NLRB 999 (1985); *Martin City Ready Mix*, 264 NLRB 450, 451 (1982). Thus, during the month of January 1993, Respondent, through various management officials, violated Section 8(a)(1) of the Act by threatening employees with the futility of supporting the Union and with a loss of benefits, with no chance of promotion, and with discharge in order to dissuade them from supporting the Union. Moreover, that month, Respondent violated Section 8(a)(1) and (3) of the Act by denying Monica Baltz the use of a vacant office in retaliation for her overt support for the Union. Then, a month later, on February 9, Respondent's chief executive officer, George Craig, not only corroborated what the San Francisco managers had threatened but also greatly exacerbated and expanded upon the coercive effect of their conduct. Speaking loudly and assertively, Craig threatened employees with the closure of the San Francisco office and relocation elsewhere if employees engaged in protected concerted activities, uttered a thinly veiled threat to use unlawful conduct by stating that Respondent would utilize ''every available tactic'' to defeat the Union, solicited employee grievances and implicitly promised to correct them, warned employees that their support for the Union would be futile by stating that he would deal with an association but not with the Union, and accused employees of disloyalty for engaging in support for the Union, activity which he scornfully dismissed as ''bullshit.'' His threats and warnings were, of course, violative of Section 8(a)(1) of the Act.

Counsel for the General Counsel argues that George Craig's February statements themselves warrant the issuance of a bargaining order herein. Although I believe that Respondent's chief executive officer's comments must be viewed as amplifying what occurred during the month of January, I find merit in this contention. Thus, while the effect of the Section 8(a)(1) and (3) of the Act violations, which were committed in January, may be erased by traditional Board remedies, I believe that the pernicious effect of Craig's comments, particularly his threats that Respondent would close the San Francisco office and relocate elsewhere in the event of a work stoppage and that he would deal with an association but not with the Union, his reference to the employees' support for the Union as evidencing disloyalty and, after equating the campaign against the Union to a war,

---

[56] In these circumstances, I need not make any findings as to whether the position of copywriter is a bargaining unit position or the validity of the authorization forms of individuals in that job classification.

[57] The Court identified ''still a third category of minor or less extensive unfair labor practices, which, because of their minimal impact on the election machinery, will not sustain a bargaining order.'' *Gissel Packing Co*., supra at 615. For the reasons expressed infra, I do not believe Respondent's unfair labor practices were of this less serious variety.

his implicit warning that Respondent would use any means, including unlawful acts, to defeat the Union, in light of Respondent's January malfeasance, is likely to linger, inhibiting the employees from effectively exercising any freedom of choice during a representation election.[58] In this regard, I note that George Craig was, and remains, Respondent's most senior management official, the individual, in this large, multinational corporation, who states policy with the most authoritative voice and who, more than any other official, may be relied on to act upon his threats. *Interstate Truck Parts*, 312 NLRB 661 (1993); *Astro Printing Services*, 300 NLRB 1028, 1030 (1990); *Kona 60 Minute Photo*, 277 NLRB 867, 870 (1985). Next, contrary to counsel for Respondent, I note that, in the months between Craig's unlawful comments and the election, Respondent failed to act to ameliorate the harmful effect not only of his utterances but also of what occurred a month earlier. Thus, while counsel points to Respondent's promotion of Joann Moschella and its ''permissive attitude'' toward the distribution of union literature and the nonmanagement group meetings, there exists no record evidence that Respondent has ever taken any action to specifically vitiate the clearly unlawful and deleterious nature and effect of Craig's statements or, indeed, of its earlier unfair labor practices. Cf. *Almet, Inc*., supra at 629.[59] I further note that, having been made during a speech to a gathering of Respondent's entire San Francisco employee complement and in responses to questions posed by some of those present, Craig's remarks received the widest possible dissemination amongst the bargaining unit employees.[60] Also, I note that, among the unlawful threats uttered by Craig, was his warning that, if the employees engaged in a work stoppage, Respondent would close the San Francisco office and relocate elsewhere—a patent ''hallmark'' violation of the Act. The Board has long held that ''threats to eliminate the employees' source of livelihood have a devastating and lingering effect on employees, an effect that most effectively can be remedied by an order to bargain.'' *White Plains Lincoln Mercury*, 288 NLRB 1133, 1139–1140 (1988); *Q-1 Motor Express, Inc*., 308 NLRB 1267, 1268 (1992). Finally, citing *J.L.M., Inc. v. NLRB*, 31 F.3d 79 (2d Cir. 1994), counsel for Respondent argues that the passage of time herein militates against the issuance of a bargaining order. Contrary to counsel, the Board has consistently held that the ''validity of a bargaining order depends on an evaluation of the circumstances when the unfair labor practices were committed. . . . delay is an unfortunate but inevitable result of the process of hearing, decision, and review. To deny enforcement on the basis of passage of time would encourage continued litigation.'' *Interstate Truck Parts*, supra at 661 fn. 7. Accordingly, based upon the foregoing and the record as a whole, I believe, and shall recommend, that the possibility of erasing the effect of George Craig's egregious statements and ensuring a fair rerun election by the use of traditional remedies is slight and that employee sentiment, once expressed through the authorization forms, would be better protected by the issuance of a bargaining order. *Astro Printing Services*, supra; *Kona 60 Minute Photo*, supra.[61]

The Objections to the Conduct of the Election

In view of Respondent's above-described unfair labor practices, including threatening employees with loss of benefits if they selected the Union as their bargaining representative, threatening employees that it would not bargain with the Union if employees selected it as their bargaining representative, threatening employees with discharge and with withholding promotions because of their support for the Union, threatening to close the San Francisco facility and relocate the office elsewhere if employees engage in a work stoppage, warning employees that their support for the Union was a demonstration of disloyalty toward Respondent, implicitly threatening to fight the Union with every weapon at its disposal, including unlawful ones, soliciting employee grievances and implying to promise to correct them, and failing to assign Monica Baltz to a vacant office because of her support for the Union, I believe that Respondent created an atmosphere in which a fair election was impossible. Accordingly, inasmuch as the Union's objections reflect my unfair labor practice findings, I shall recommend that the election be set aside. Further, as I have concluded that a bargaining order remedy is appropriate herein, I shall also recommend that the representation petition in Case 20–RC–16868 be dismissed.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees of Respondent constitute a unit appropriate for bargaining within the meaning of Section 9(b) of the Act:

> All full time and regular part-time employees employed by Respondent, including employees if the following job classifications: assistant editor/administrator, associate editor, administrative assistants, assistant editors/reference, editorial assistants, editorial/marketing coordinators, production coordinators, production editors, senior editorial assistants, software/scheduling su-

[58] In this regard, I note that, inasmuch as the Union's support dissipated from a 76-percent majority on December 18, 1992, to receipt of only 31 votes in the election, the effect of Craig's deleterious conduct is manifestly clear. *Sheraton Hotel Waterbury*, 312 NLRB 304, 305 (1993).

[59] Counsel for Respondent extensively quotes from and places great reliance upon *Almet*, supra. Such reliance is misplaced, however, for in deciding against the necessity of a bargaining order therein, the Board considered that the respondent undertook to specifically ameliorate its unlawful conduct.

[60] In contrast, in *Blue Grass Industries*, 287 NLRB 274 (1987), another case relied on by counsel for Respondent, in ruling against the need for a bargaining order remedy, the Board noted that ''the most coercive unfair labor practices the Respondent has committed . . . were not shown to have been disseminated among employees in the unit.'' Id. at 276.

[61] Counsel for Respondent argues that support for the Union declined after the handbilling incident during the in-house author's marketing workshop. While employees may have been upset at the Union's tactic, however, such pales in comparison to the damaging effect of George Craig's statements. Moreover, the employees' petition subsequent to the election appears to be nothing more their acknowledgment of the election result and, notwithstanding the unresolved status of the election, of the need to continue working together for the good of the business.

pervisors, design assistants, design coordinators, designers, senior designers, desktop specialists, jacket design managers, telesales representatives, assistant direct mail managers, customer service representatives, marketing assistants, marketing associates, marketing coordinators, editorial/marketing coordinator of evangelical books, publicists, marketing assistants, marketing associates, marketing coordinators, marketing services assistants, promotion coordinators, publicity assistants, international publishing assistants, inventory coordinators, production assistants, senior production assistants, marketing coordinators, assistant projects managers, design assistants, designers, junior designers, desktop coordinators, project coordinators, assistant editors, project editors, production artists, project managers, marketing coordinators, senior designers, assistants to the president, design/production assistants, senior designers, associate editors, film traffic coordinators, manuscript readers, production coordinators, production managers, publicity assistants, special markets assistants, sponsorship managers, systems support technicians, administrative assistants, shipping/purchasing assistants, mailroom assistants, receptionists, accounts payable assistants, accounts payable administrative assistants, finance assistants, cost accountants; excluding all other employees, senior vice president, vice president/publisher, vice president/marketing director (general books), vice president/marketing director (religious books), vice president/chief financial operations officer, personnel director, vice president/director (new business development), president/publisher (Collins San Francisco), director (international publishing department (IPD)), overseas product manager (IPD), foreign rights manager (IPD), subsidiary rights manager (IPD), parish marketing manager (marketing-religious books (M-RB)), manager, special religious markets (M-RB), advertising manager (M-RB), marketing manager (M-RB), design manager (design & creative), editor, senior editor, managing editor and manager (production editing), operations manager, accounting manager, cost accountant (Access Productions), personnel administrator, associate marketing director (M-RB), director (inventory & sales service), manager (marketing services), marketing manager (alternative books), author relations manager, publicity manager, publicity director, promotions manager, assistant inventory control manager, director (international publishing), vice president (manufacturing & direction, Access Productions), assistant production manager, West Coast Systems Director, project manager (electronic publishing systems), president/creative director (T.U.B.), design manager (Access Productions), editorial director (Access Productions), desktop publishing manager (Access Productions), senior editor (Access Productions), design director (T.U.B.), principal designer (T.U.B.), reprint supervisor, assistant editor, (administrative), art director, executive director, executive assistant, professional employees, confidential employees, guards, and supervisors as defined in the Act.

4. Since on or about December 18, 1992, the Union has been the representative for purposes of collective bargaining of a majority of the employees in the above-described appropriate unit.

5. In or about January 1993, by threatening employees with the loss of benefits if they selected the Union as their bargaining representative; threatening employees that it would not bargain with the Union if they selected it as their bargaining representative, thereby signaling that representation by a union would be futile; and threatening employees with discharge and with the withholding of promotions because of their support for the Union, Respondent engaged in conduct violative of Section 8(a)(1) of the Act.

6. In January 1993, by failing to assign a vacant office to Monica Baltz because of her support for the Union, Respondent engaged in discriminatory conduct violative of Section 8(a)(1) and (3) of the Act.

7. On or about February 9, 1993, by threatening employees with closure of the San Francisco office and relocation if they engaged in a concerted work stoppage; warning employees that their support for the Union was ''extremely disloyal'' toward Respondent; stating to employees that the campaign against the Union was akin to war and Respondent would fight with ''every weapon at our disposal,'' thereby conveying a thinly veiled threat to employees that it would engage in unlawful conduct; by threatening to refuse to bargain with the Union if employees selected it as their bargaining representative, thereby signaling the futility of supporting the Union; and by soliciting employee grievances and implying to promise to correct them, Respondent, by its chief executive officer, George Craig, engaged in conduct violative of Section 8(a)(1) of the Act.

8. The above unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

9. Unless specified above, Respondent engaged in no other unfair labor practices.

REMEDY

Having found that Respondent engaged in serious unfair labor practices, violative of Section 8(a)(1) and (3) of the Act, I shall recommend that it be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. In particular, I have concluded that even considered apart from the unlawful conduct engaged in by Respondent a month earlier, the effect of George Craig's comments to the employees, during his meeting with them on February 9, 1993, would tend to linger in the thoughts of Respondent's employees, would not be readily dispelled, and would have an utterly deleterious effect upon their support for the Union and their freedom of choice during a representation election. In these circumstances, as the possibility of erasing the effects of Respondent's unfair labor practices and of conducting a fair rerun election by use of traditional remedies is slight and as, on balance, the employees' representation desires as once expressed through their signed authorization forms would best be protected by a bargaining order, I shall recommend that Respondent be ordered to recognize and bargain with the Union, dating Respondent's bargaining obligation from the date of the recognition demand, December 18, 1992.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[62]

ORDER

The Respondent, HarperCollins San Francisco, a Division of HarperCollins Publishers, Inc., San Francisco, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with loss of benefits if they select the Union as their bargaining representative.

(b) Threatening employees that it would not bargain with the Union if employees select it as their bargaining representative, thereby signaling that representation by a union would be futile.

(c) Threatening employees with discharge because of their support for the Union.

(d) Threatening employees with withholding promotions because of their support for the Union.

(e) Refusing to assign employees to vacant offices because of their support for the Union.

(f) Threatening employees with closure of the San Francisco office and relocation if they engage in union or other protected concerted activities.

(g) Warning employees that their support for the Union was a demonstration of their disloyalty toward Respondent.

(h) Implicitly threatening to fight the Union with every weapon at its disposal, including unlawful ones.

(i) Soliciting employee grievances and implying to promise to correct them.

(j) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary effectuate the policies of the Act.

(a) Recognize and bargain with the Union as the majority representative of its employees in the following appropriate unit:

> All full time and regular part-time employees employed by Respondent, including employees if the following job classifications: assistant editor/administrator, associate editor, administrative assistants, assistant editors/reference, editorial assistants, editorial/marketing coordinators, production coordinators, production editors, senior editorial assistants, software/scheduling supervisors, design assistants, design coordinators, designers, senior designers, desktop specialists, jacket design managers, telesales representatives, assistant direct mail managers, customer service representatives, marketing assistants, marketing associates, marketing coordinators, editorial/marketing coordinator of evangelical books, publicists, marketing assistants, marketing associates, marketing coordinators, marketing services assistants, promotion coordinators, publicity assistants, international publishing assistants, inventory coordinators, production assistants, senior production assistants, marketing coordinators, assistant projects managers, design assistants, designers, junior designers, desktop coordinators, project coordinators, assistant editors, project editors, production artists, project managers, marketing coordinators, senior designers, assistants to the president, design/production assistants, senior designers, associate editors, film traffic coordinators, manuscript readers, production coordinators, production managers, publicity assistants, special markets assistants, sponsorship managers, systems support technicians, administrative assistants, shipping/purchasing assistants, mailroom assistants, receptionists, accounts payable assistants, accounts payable administrative assistants, finance assistants, cost accountants; excluding all other employees, senior vice president, vice president/publisher, vice president/marketing director (general books), vice president/marketing director (religious books), vice president/chief financial operations officer, personnel director, vice president/director (new business development), president/publisher (Collins San Francisco), director (international publishing department (IPD)), overseas product manager (IPD), foreign rights manager (IPD), subsidiary rights manager (IPD), parish marketing manager (marketing-religious books (M-RB)), manager, special religious markets (M-RB), advertising manager (M-RB), marketing manager (M-RB), design manager (design & creative), editor, senior editor, managing editor and manager (production editing), operations manager, accounting manager, cost accountant (Access Productions), personnel administrator, associate marketing director (M-RB), director (inventory & sales service), manager (marketing services), marketing manager (alternative books), author relations manager, publicity manager, publicity director, promotions manager, assistant inventory control manager, director (international publishing), vice president (manufacturing & direction, Access Productions), assistant production manager, West Coast Systems Director, project manager (electronic publishing systems), president/creative director (T.U.B.), design manager (Access Productions), editorial director (Access Productions), desktop publishing manager (Access Productions), senior editor (Access Productions), design director (T.U.B.), principal designer (T.U.B.), reprint supervisor, assistant editor, (administrative), art director, executive director, executive assistant, professional employees, confidential employees, guards, and supervisors as defined in the Act.

(b) Post at Respondent's office and place of business in San Francisco, California, copies of the attached notice marked ''Appendix.''[63] Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respond-

[62] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[63] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

ent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint be dismissed insofar as it alleges that Respondent laid off employees Monica Baltz, Julie Wunderlich, Dawn Balzarano, and Gina Hyams in violation of Section 8(a)(1) and (3) of the Act and that the representation petition in Case 20–RC–16868 be dismissed.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and had ordered us to post and abide by this notice.

WE WILL NOT threaten our employees with loss of benefits if they select Communications Workers of America, AFL–CIO as their bargaining representative.

WE WILL NOT threaten our employees that we will not bargain with the Union if employees select it as their bargaining representative, thereby signaling that representation by a union will be futile.

WE WILL NOT threaten our employees with discharge because of their support for the Union.

WE WILL NOT threaten our employees with withholding promotions because of their support for the Union.

WE WILL NOT refuse to assign our employees to vacant offices because of their support for the Union.

WE WILL NOT threaten our employees with the closure of the San Francisco office and its relocation if they engage in union or other protected concerted activities.

WE WILL NOT warn our employees that their support for the Union is a demonstration of their disloyalty toward us.

WE WILL NOT implicitly threaten to do so unlawfully by stating that we will fight the Union with every weapon at our disposal.

WE WILL NOT solicit our employees grievances and imply to promise to correct them.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act.

WE WILL recognize the Union as the representative for purposes of collective bargaining of our employees in the following appropriate unit and, upon request, engage in bargaining with it as to wages, hours, and working conditions. The appropriate unit is:

> All full time and regular part-time employees employed by Respondent, including employees if the following job classifications: assistant editor/administrator, associate editor, administrative assistants, assistant editors/reference, editorial assistants, editorial/marketing coordinators, production coordinators, production editors, senior editorial assistants, software/scheduling supervisors, design assistants, design coordinators, designers, senior designers, desktop specialists, jacket design managers, telesales representatives, assistant direct mail managers, customer service representatives, marketing assistants, marketing associates, marketing coordinators, editorial/marketing coordinator of evangelical books, publicists, marketing assistants, marketing associates, marketing coordinators, marketing services assistants, promotion coordinators, publicity assistants, international publishing assistants, inventory coordinators, production assistants, senior production assistants, marketing coordinators, assistant projects managers, design assistants, designers, junior designers, desktop coordinators, project coordinators, assistant editors, project editors, production artists, project managers, marketing coordinators, senior designers, assistants to the president, design/production assistants, senior designers, associate editors, film traffic coordinators, manuscript readers, production coordinators, production managers, publicity assistants, special markets assistants, sponsorship managers, systems support technicians, administrative assistants, shipping/purchasing assistants, mailroom assistants, receptionists, accounts payable assistants, accounts payable administrative assistants, finance assistants, cost accountants; excluding all other employees, senior vice president, vice president/publisher, vice president/marketing director (general books), vice president/marketing director (religious books), vice president/chief financial operations officer, personnel director, vice president/director (new business development), president/publisher (Collins San Francisco), director (international publishing department (IPD)), overseas product manager (IPD), foreign rights manager (IPD), subsidiary rights manager (IPD), parish marketing manager (marketing-religious books (M-RB)), manager, special religious markets (M-RB), advertising manager (M-RB), marketing manager (M-RB), design manager (design & creative), editor, senior editor, managing editor and manager (production editing), operations manager, accounting manager, cost accountant (Access Productions), personnel administrator, associate marketing director (M-RB), director (inventory & sales service), manager (marketing services), marketing manager (alternative books), author relations manager, publicity manager, publicity director, promotions manager, assistant inventory control manager, director (international publishing), vice president (manufacturing & direction, Access Productions), assistant production manager, West Coast Systems Director, project manager (electronic publishing systems), president/creative director (T.U.B.), design manager (Access Productions), editorial director (Access Productions), desktop publishing manager (Access Productions), senior editor (Access Productions), design director (T.U.B.), principal designer (T.U.B.), reprint supervisor, assistant editor, (administrative), art director, executive director, executive assistant, professional employees, confidential employees, guards, and supervisors as defined in the Act.

HARPERCOLLINS SAN FRANCISCO, A DIVISION OF HARPERCOLLINS PUBLISHERS, INC.